

**KENTUCKY PERSONNEL BOARD
MINUTES OF JUNE 10, 2011**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Suzanne Cassidy on June 10, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

M. Suzanne Cassidy, Chair
Larry B. Gillis, Vice Chair
David F. Hutcheson, Jr., Member
Wayne "Doug" Sapp, 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

Board Personnel Absent:

David B. Stevens, Member

2. READING OF THE MINUTES OF REGULAR MEETING HELD MAY 16, 2011

The minutes of the last Board meeting had been previously circulated among the members. Chair Cassidy asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Ms. Gardner seconded, and the motion carried 5-0. The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek stated that the Board members have been provided with two Court of Appeals decisions, *Cecil Neace v. Health and Family Services* and *Shari Bennett v. Health and Family Services*. The decision of the Franklin Circuit Court and the Board was upheld in both cases.

Mr. Sipek advised that he and Mr. Crocker will be attending annual Hearing Officer Training held by the Attorney General on June 24, 2011.

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

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, on behalf of the Personnel Cabinet, came forward to present the Cabinet's report.

Ms. Bevington stated that the Kentucky Human Resource Information System (KHRIS) has been live since April 1, 2011. The Cabinet is working on enhancements to reporting and the employee self-service function.

The Kentucky Administrative Regulation amendments that the Personnel Cabinet had previously approved by the Board will be heard in July by the Subcommittee.

Nominations for the Governor's Ambassador Awards to recognize state workers based on volunteerism, teamwork, etc. can be submitted on-line until August 31, 2011.

At the conclusion of the Personnel Cabinet's report, Chair Cassidy asked the parties to come forward for oral argument.

5. ORAL ARGUMENTS

A. David East v. Justice and Public Safety Cabinet

Present for oral argument were counsel for Appellant, Hon. Matt Lynch, and counsel for Appellee, the Hon. Jamhal Woolridge. The parties answered questions from the Board.

B. ~~Sherry Pottin v. Cabinet for Health and Family Services (Request by Appellee)~~

(Request withdrawn by agreement of the parties)

6. **MOTIONS**

A. Movant's Petition – filed by Amy Mischler (**Deferred from May**)

No parties were present to argue Movant's petition. The Board members agreed to consider this matter in closed session.

7. **REQUEST FOR INVESTIGATION**

Request for Investigation of Dept. of Agriculture
--Hiring of two Assistant Directors – request by Larry Gillis
--Response of Dept. of Agriculture – Hon. Nicole Liberto

Prior to Mr. Gillis discussing his request for investigation, he advised the Board that he will recuse himself from participating in any discussion of this matter and will not vote on this issue.

The Hon. Nicole Liberto was present to represent the Department of Agriculture and the Hon. Dinah Bevington was present to represent the Personnel Cabinet.

Mr. Gillis alleged "burrowing" of two non-merit employees (Directors), Danita Fentress-Laird and Kathryn Willis, into merit, Assistant Director positions at the Department of Agriculture. Two positions were established, one in Personnel and Budget and one in Information Technology (IT). Both positions had the same job description. Despite advising the Agency that he was interested in the positions, he was never interviewed. However, both Fentress-Laird and Willis each applied for both positions, were interviewed and ultimately were placed in the positions.

Mr. Gillis stated that for the Personnel and Budget position there were 250 applicants, 92 of which were internal mobility and 16 veterans. For the IT position, there were 221 applicants, 92 of which were internal mobility and 14 veterans. Fentress-Laird and five veterans for the Assistant Director in Personnel and Budget and Willis and five veterans for Assistant Director in IT were interviewed. [KRS 18A.150(3) required Agriculture to offer interviews to five veterans.]

Mr. Gillis stated that he made an open records request for any documents, i.e., correspondence or e-mails concerning the establishment, posting, and deliberation of the specific positions in question. Mr. Gillis was advised by the Agency (Agriculture) that no documents were available; that everything was either done face-to-face or by phone.

Mr. Gillis stated that candidate Fentress-Laird had access to information pertaining to other applicants. Mr. Gillis stated that this is a conflict of interest and an unfair advantage.

Mr. Gillis stated it is the Board's job to protect the merit system and asked the Board to investigate this matter. Mr. Gillis stated that if the Board finds that improper actions occurred that both positions be vacated and be refilled. Mr. Gillis stated that he takes his job seriously; and although he was not interested in re-applying for the positions, he felt the other applicants deserved a chance to re-apply. Mr. Gillis stated that he personally knew two interested applicants: Angela Skelton, who is now retired, had 22 years of state service with 15 years experience in Human Resources, and Tina Goodmann, former Chair of the Personnel Board, who has 24 years of state service and extensive Human Resources experience. Although both are excellent candidates, neither one received an interview.

Ms. Liberto advised that the Personnel Cabinet approved the positions after an investigation and did not indicate that the Agency needed to make any changes to the process. Thereafter, the positions were filled.

Mr. Gillis stated that the "investigation" Ms. Liberto is referring to is actually a letter of inquiry dated December 27, 2010, from Ms. Dinah Bevington.

Ms. Bevington affirmed that the Personnel Cabinet sent a letter of inquiry addressing specific instances of concern. However, the Cabinet never investigated this matter. Ms. Bevington received a response from Ms. Liberto addressing the Cabinet's concerns and indicated that statutory and regulatory requirements were met. Ms. Bevington stated that the Cabinet then processed the actions.

Ms. Gardner asked if the Agency responded in writing to Ms. Bevington's inquiry. Ms. Bevington stated that the response was written.

Mr. Hutcheson asked if the Personnel Cabinet looked into who applied or who was on the selection committee. Ms. Bevington stated that she did not.

Chair Cassidy asked what date the two applicants were put into their positions. Ms. Liberto responded January 16, 2011, was the effective date. Chair Cassidy also wanted to know how the Department determined it could fund these new positions, with employees being furloughed and the budget crisis. Ms. Liberto stated that she did not know the answer to that question.

Mr. Sapp asked if the Director positions had been abolished. Ms. Liberto stated they had not been abolished.

Ms. Gardner asked who made the decision that these jobs would be posted on the Competitive Register as opposed to the Internal Mobility register. Ms. Liberto stated that the general rule is they “cast the broadest net possible” to get specialized talent. She further stated that all candidates were considered.

Mr. Sapp asked who was involved in the interview panel. Ms. Liberto stated that Alisa Edwards (a subordinate of Fentress-Laird) was the sole member of the interview panel and made the selections.

Ms. Gardner stated that if Internal Mobility candidates had been interviewed, and if there had been more than one person on the interview panel, she would have felt better about the process.

Ms. Gardner made a motion to investigate. Mr. Hutcheson seconded the motion and the motion carried 4-0, with Mr. Gillis recusing.

Chair Cassidy asked Mr. Sipek to present how to proceed with the investigation at the July Board meeting. Mr. Sapp asked for additional information regarding the responsibility of the appointing authority, and the statutes and regulations for filling positions of where the responsibility lies and to compare it with this matter.

8. 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. Ms. Gardner 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 5-0. (10:41 a.m.)

Ms. Gardner moved to return to open session. Mr. Hutcheson seconded and the motion carried 5-0. (11:40 a.m.)

Upon commencing open session, Chair Cassidy stated that the investigation presented by Vice-Chair Larry Gillis was not discussed during closed session.

9. **MOTION TO BE DECIDED**

Movant's Petition – filed by Amy Mischler (**Deferred from May**)

Mr. Hutcheson moved to deny Ms. Mischler's petition. Ms. Gardner seconded and the motion carried 5-0.

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. David East v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's response and oral argument and to accept the recommended order, with clerical correction, dismissing the appeal. Mr. Sapp seconded and the motion carried 5-0.

B. Sherry Pottin v. Cabinet for Health and Family Services

Mr. Sapp moved to note Appellee's exceptions, Appellant's response and to defer this matter to the next meeting of the Board. Ms. Gardner seconded and the motion carried 5-0.

C. Beverly Adams v. Cabinet for Health and Family Services
(Deferred from May Meeting)

Mr. Sapp moved to note Appellee's exceptions, oral argument and accept the Final Order dismissing the appeal, as attached to the minutes. Mr. Hutcheson seconded and the motion carried 5-0.

D. Garnett Parrish v. Justice and Public Safety Cabinet
(Deferred from May Meeting)

Mr. Gillis moved to note Appellee's exceptions, oral argument and to defer this matter to the next meeting of the Board. Ms. Gardner seconded and the motion carried 5-0.

E. Beverly Reliford v. Cabinet for Health and Family Services
(Deferred from April and May Meetings)

Mr. Gillis moved to note Appellee's exceptions, Appellant's response and oral argument and to defer this matter to the next meeting of the Board. Ms. Gardner seconded and the motion carried 4-0, with Mr. Sapp abstaining.

F. Dartanya Hill v. Cabinet for Health and Family Services

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

G. Gary Keys v. Personnel Cabinet and Justice and Public Safety Cabinet

Mr. Gillis moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

H. Ralph Mischler v. Department of Military Affairs

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

I. Betty Runner v. Cabinet for Health and Family Services
(Appeal No. 2010-242)

Mr. Gillis moved to note Appellant's exceptions and Appellee's response (Appellant's Reply to Appellee's Response to Exceptions was not allowed) and to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 5-0.

J. Michael Ashcraft v. Energy and Environmental Cabinet

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

K. Margie Bidwell v. Cabinet for Health and Family Services

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

L. Teresa Hall v. Finance and Administration Cabinet

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

M. Mary Morgan v. Justice and Public Safety Cabinet

Mr. Sapp moved to accept the recommended order, with clerical correction, sustaining to the extent the appeal. Ms. Gardner seconded and the motion carried 5-0.

Show Cause Orders – Appeals Dismissed –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. The Appellant filed responses to the show cause order.

N. Shirley Wilson v. Cabinet for Health and Family Services
--Appellant's Response

Mr. Hutcheson moved to return this matter to the active docket. Mr. Gillis seconded and the motion carried 5-0.

Show Cause Orders – Appeals Dismissed - No Response Filed

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

- O. Tonya Gupton v. Cabinet for Health and Family Services
- P. Bobby Page v. Personnel Cabinet and Tourism, Arts & Heritage Cabinet

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeal. Ms. Gardner seconded and the motion carried 5-0.

11. WITHDRAWALS

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

- A. Penny Brown v. Justice and Public Safety Cabinet
- B. Vonda Corum v. Cabinet for Health and Family Services
- C. Dina Quispe v. Tourism, Arts and Heritage Cabinet
- D. Londa J. Adkins v. Personnel Cabinet
- E. Melitta Clark v. Justice and Public Safety Cabinet
- F. Ronda Paul v. Public Protection Cabinet
- G. Allison Stringer v. Cabinet for Health and Family Services

12. SETTLEMENTS

Mr. Hutcheson moved to accept settlements "A thru D" and "F thru H" as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Ms. Gardner seconded and the motion carried 5-0.

- A. Cindy McGuire v. Justice and Public Safety Cabinet
- B. Autumn Corns Barber v. Education and Workforce Development Cabinet and Robert Higgins
- C. Christie Bailey v. Education and Workforce Development Cabinet (2 appeals)
- D. Hollie Freeman v. Justice and Public Safety Cabinet
- F. Martha Robertson v. Education and Workforce Development Cabinet
- G. Marsha Stoner v. Transportation Cabinet
- H. Barbara Tingle v. Justice and Public Safety Cabinet

Mr. Sapp moved to accept settlement "E" as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Hutcheson seconded and the motion carried 4-0, with Chair Cassidy abstaining.

- E. Sharon Harris v. Cabinet for Health and Family Services

13. OTHER

Chair Cassidy asked if there were any other matters to discuss.

There being no further business, Mr. Sapp moved to adjourn. Mr. Gillis seconded and the motion carried 5-0. (12:10 p.m.)

M. Suzanne Cassidy, Chair

Larry B. Gillis, Vice Chair

David F. Hutcheson, Jr., Member

Wayne D. Sapp, Member

Susan Gardner, Member