

**KENTUCKY PERSONNEL BOARD  
MINUTES OF FEBRUARY 11, 2011**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Cecil F. Dunn on February 11, 2011, 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  
Wayne "Doug" Sapp, Member  
Susan Gardner, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

David F. Hutcheson, Jr., Member  
David B. Stevens, Member  
Linda R. Morris, Administrative Section Supervisor

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 14, 2011**

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

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that Ms. Gwen McDonald will be joining the Board's staff on February 16, 2011, as an Administrative Specialist III.

Mr. Sipek advised that the Board members have been provided a copy of the Court of Appeals Opinion in *Finance and Administration Cabinet v. Wanda Wade* (2008-CA-1822) affirming the Personnel Board's decision. Mr. Sipek stated it was a complicated case arising from two appeals. The parties still have a few days to request discretionary review with the Kentucky Supreme Court.

Mr. Sipek stated that the Board members have a copy of the statistical data for calendar year 2010. Mr. Sipek pointed out that the caseload stayed constant with 223 pending appeals at the beginning of the calendar year and ending the year with 220 pending appeals. Another important statistic is the 62 Agreed Orders/Settlements. Mr. Sipek stated that the parties are encouraged to settle or mediate appeals.

At the conclusion of Mr. Sipek's report, Chairman Dunn called for the Personnel Cabinet's report.

#### 4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, Executive Director for the Office of Legal Services, came forward to present the Cabinet's report.

Ms. Bevington stated the Cabinet is interested in two specific bills before the legislature: The Personnel Cabinet's reorganization bill and HB 124, which will permit the Personnel Cabinet Secretary to allow an employee receiving a reclassification or a promotion, in addition to a 5 percent increase, an increase in pay to what a new appointment could receive. This would be a discretionary decision, as other individuals in the same county, with same qualifications and classification would also be raised.

##### Amendments to 101 KAR 1:325, Initial Probationary Periods

Ms. Bevington summarized the amendments to the Probationary Periods. She stated that with the implementation of the Kentucky Human Resource Information System (KHRIS), significant programming will need to be made to the system to accept these amendments, after KHRIS goes live April 4, 2011. With a list of priorities, she stated that it may not be possible to make the changes until August 2011. Ms. Bevington stated that she spoke with Mr. Crocker about deferring the amendments until the Cabinet could accommodate the changes under the new system.

Mr. Crocker stated it was his understanding the Cabinet will be submitting additional regulations for the Board's review; therefore, he recommended the matter be

deferred. Mr. Crocker also stated that Ms. Gardner proposed taking out the language under Section 1(4): "If an applicant is appointed to a position from a competitive register, the appointment shall be considered an initial appointment." Ms. Gardner stated that the language was confusing, because internal mobility candidates were also included on the competitive register. Mr. Sipek stated that there may not have been internal mobility candidates when this language was written. Mr. Sipek stated he would like to confer with the Personnel Cabinet to see if this language is needed.

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

Ms. Bevington introduced Mr. Bob Smith, Co-Chair of the Governor's Employee Advisory Council (GEAC). Under 101 KAR 1:375, Section 4(1) Grievances, a first-line supervisor must respond to a grievance in five days. Under the Master Agreement the Governor allowed ten days for first-line review. Ms. Bevington stated that although it is the Board's regulation, she would like to amend it consistent with the Master Agreement, and change it from five days to ten days.

Mr. Gillis was concerned about the additional time, stating that there is a sixty-day limit for an employee to file an appeal with the Board, and which takes precedent. Ms. Bevington stated that the regulation takes precedent over the Master Agreement.

Mr. Smith stated that sometimes the first-line supervisor will "rubber-stamp" a response, pushing it on to the next level to deal with. Mr. Smith is hoping that with the additional time, there will be more communication, saving time and money further down the line.

At the conclusion of the Personnel Cabinet's report, Chairman Dunn asked the parties to come forward for the first oral argument.

## 5. ORAL ARGUMENTS

### A. Fredericka Caldwell v. Cabinet for Health and Family Services

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

B. Mary Elaine Jett v. Education and Workforce Development Cabinet

Present for oral argument were the Appellant, Mary Elaine Jett, and counsel for Appellee, the Hon. Lisa Lang. The parties answered questions from the Board.

C. Nancy Nusz, et al. v. Education and Workforce Development Cabinet  
(6 appeals) (Ordered by Board)

Present for oral argument were counsel for Appellants, Hon. Jennifer Hatcher, and counsel for Appellee, the Hon. Lisa Lang. The parties answered questions from the Board.

D. Jennifer Quarles v. Cabinet for Health & Family Services

Present for oral argument were counsel for Appellant, Hon. Max Comley, and counsel for Appellee, the Hon. Anne Burnham. The parties answered questions from the Board.

6. **CLOSED SESSION**

Mr. Sapp moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Cassidy seconded. Chairman Dunn 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. (11:01 a.m.)

Ms. Cassidy moved to return to open session. Ms. Gardner seconded and the motion carried 5-0. (11:27 a.m.)

## 7. 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. Fredericka Caldwell v. Cabinet for Health and Family Services  
**Moved from January**

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

B. Mary Elaine Jett v. Education and Workforce Development Cabinet

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

C. Nancy Nusz, et al. v. Education and Workforce Development Cabinet – 6 appeals  
**Deferred from November**

Ms. Cassidy moved to note Appellants' exceptions, Appellee's exceptions and response, and oral argument and to accept the recommended order, with clerical correction, dismissing three appeals (Nancy Nusz, Catherine Johnson, and Vickie Claxon) and sustaining to the extent three appeals (Kerry Carr, John Johnson, and Anne McCall). Mr. Sapp seconded and the motion carried 5-0.

D. Jennifer Quarles v. Cabinet for Health and Family Services

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

E. Bennett D. Smith v. Justice and Public Safety Cabinet  
**Deferred from January**

Ms. Gardner moved to alter the recommended order in accordance with the Final Order attached to the minutes, sustaining the appeal to the extent that the Appellant be reinstated to his former position with back pay and benefits and that he be suspended for thirty days without pay. Mr. Sapp seconded and the motion carried 5-0.

F. David Buchanan v. Finance and Administration Cabinet

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

G. James Lambert v. Justice and Public Safety Cabinet

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

**Show Cause Orders – Appeal 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.

H. Brandon Brown v. Cabinet for Health and Family Services

I. Alex Taulbee v. Justice and Public Safety Cabinet

Mr. Gillis 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. Mr. Sapp seconded and the motion carried 5-0.

8. **WITHDRAWALS**

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

A. Richard Feiler v. Transportation Cabinet

- B. Ariana Lackey v. Cabinet for Health and Family Services
- C. Jason Lambert v. Energy and Environment Cabinet
- D. Brandy Spencer v. Cabinet for Health and Family Services
- E. Kenneth W. Tramontin v. Cabinet for Health and Family Services

9. **SETTLEMENTS**

Ms. Gardner moved to defer the following settlement to the next Board meeting. Ms. Cassidy seconded and the motion carried 5-0.

- A. Adanne Bagby v. Cabinet for Health and Family Services

Ms. Cassidy moved to accept the following settlement 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. Annie Jenkins and Julie Middleton v. Energy and Environment Cabinet

10. **OTHER**

Mr. Crocker stated that he was not sure if the regulation on grievances could be ready by next month. Mr. Sapp asked if extending the first-line supervisors review to ten days would lead to more communication and settlements. Mr. Crocker said it might help, considering Mr. Smith had stated that first-line supervisors tend to “rubber-stamp” grievances to push them along.

Mr. Sipek stated that this regulation has not changed since 1994 and there are several issues to review. One is the new reporting requirement. Mr. Sipek stated that agencies need to be aware and provide the grievance information to the Board; add language that states that agencies can informally resolve disputes; and first-line supervisor’s deadline. Other deadlines could be looked at as well, so that it does not hinder a grievant’s deadline to file an appeal with the Personnel Board.

Chairman Dunn asked if there were any other matters to discuss.

There being no further business, Mr. Sapp moved to adjourn. Ms. Gardner seconded and the motion carried 5-0. (11:55 a.m.)

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Cecil F. Dunn, Chairman

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M. Suzanne Cassidy, Vice Chair

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Larry B. Gillis, Member

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Wayne D. Sapp, Member

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Susan Gardner, Member