

**KENTUCKY PERSONNEL BOARD
MINUTES OF JULY 10, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on July 10, 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
Larry B. Gillis, 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 not present:

M. Suzanne Cassidy, Member
David B. Stevens, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 12, 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. Mr. Gillis seconded, and the motion carried 3-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that a resolution was prepared for Reverend John T. Dunaway, which was read into the record by Mr. Crocker. The Board Members signed the resolution.

Mr. Sipek advised that the Board has a new member, Dr. David Stevens. Dr. Stevens had a prior commitment and was unable to attend the July Board meeting. Mr. Sipek stated that he looks forward to working with him.

Mr. Sipek reported that he and Mr. Crocker attended Hearing Officers' Training put on by the Attorney General's office. Mr. Crocker stated that five Hearing Officers were also in attendance: John Ryan, Patrick Moores, Steve Bolton, Hanson Williams and Geoff Greenawalt. Mr. Sipek stated there was a good turnout.

Mr. Sipek stated that he attended and spoke at the EEO Conference. During his presentation he discussed the mediation program, employee grievances and Personnel Board appeals.

Mr. Sipek advised that an Opinion and Order was issued by the Franklin Circuit Court in *David Waller v. Finance and Administration Cabinet*, 08-CI-1506. This matter was remanded back to the Personnel Board; however, it will not have a great impact. Mr. Sipek stated that the Board members could discuss what to do, assuming that decision stands and is not appealed further.

In another matter, *Finance and Administration Cabinet v. Jeffrey McDonald, et al.*, 2007-CA-1626-MR, Mr. Sipek stated that counsel for Appellants filed a Petition for Discretionary Review with the Kentucky Supreme Court. The Personnel Board will be filing a response and will get a copy to the Board members.

Mr. Sipek stated that a Statistical Data for Fiscal Year 2008-2009 report was prepared and will be provided to the Board members. Of significance, the Board has 204 appeals pending as of June 30, 2009, which are 42 appeals less than the end of the last fiscal year. Mr. Sipek stated that the lower number of appeals is likely due to changes at the Personnel Cabinet [i.e., fewer appeals due to either applicant rejections or removal from register]. Mr. Sipek stated that there were 342 Final Orders sent out and 74 of those were settlements, which is a good trend.

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

4. PERSONNEL CABINET'S REPORT

The Hon. Dan Egbers and the Hon. Joe Cowles came forward to present the Personnel Cabinet's report.

Mr. Egbers stated that they were proposing housekeeping amendments to 101 KAR 2:120. The Legislature recently amended the statute which deals with regulation to cover Chapter 16 employees. This proposed amendment is designed to bring this regulation in compliance with the statutory requirements.

Mr. Egbers stated that another emergency regulation has been filed concerning Veterans Preference, as the current one was getting ready to expire. Mr. Egbers had hoped that the Legislature would have passed it during the last session, but it did not. LRC has accepted the emergency regulation with the Board's memorandum that was prepared last time. Mr. Egbers assured the Board that there were no substantive changes in the regulation and is the same regulation as before. If there are any concerns the Board may have, Mr. Egbers said he was happy to discuss it and work with the Board. Mr. Sipek asked if there was any action needed by the Board, since LRC had accepted the Board's previous memorandum. Mr. Egbers stated that no further action is necessary.

A. Proposed amendment to 101 KAR 2:120
(pertaining to Employee Suggestion System)

Mr. Frazer moved to accept the proposed amendment to 101 KAR 2:120. Ms. Gibson seconded and the motion carried 3-0.

Mr. Joe Cowles, General Counsel for the Department of Employee Insurance, stated that he and Mr. Egbers were "tag-teaming" Ms. Dinah Bevington's job until her return September 1. He apologized for missing the June Board meeting and stated it was not intentional.

Mr. Cowles stated that he was unable to attend the Governor's EEO Conference, but that Mr. Egbers had. Mr. Egbers said that although it was compressed to a one-day conference due to budget constraints, he thought it was a great conference.

Mr. Egbers mentioned that the Personnel Cabinet is restoring the management training under the merit system curriculum that was previously done by Governmental Services and probably will require all new supervisors to attend. He advised that about 100 new supervisors attended his pilot class. The Hon. Ellen Heslen [General Counsel, Office of the Governor] has asked Mr. Egbers to put together a training module for attorneys that represent their agency before the Personnel Board, Franklin Circuit Court, etc.

Mr. Cowles advised that the health insurance is going through an audit within the next few weeks to have all ineligible dependents removed, which may result in a reduction of premiums and savings. He stated that the vendor will be sending information to all participants to verify dependent information and to provide supporting documents.

Mr. Cowles stated that GEAC Union negotiations begin July 20, 2009. Mr. Charles Wells will be heading that.

Mr. Cowles advised that HB 406 passed in 2008, which is the budget bill and gives flexibility in transferring funds to the general fund. This led to the health insurance premiums changing from "pre-pay" to "current pay," which means health contributions are billed and paid in the same month that the employee receives the health insurance coverage. As a result, 101 KAR 2:102 and 101 KAR 3:015 had to be amended to reflect that.

- B. Proposed amendments to 101 KAR 2:102 and 101 KAR 3:015
(pertaining to classified and unclassified leave)

Mr. Frazer moved to accept the proposed amendments to 101 KAR 2:102 and 101 KAR 3:015. Ms. Gibson seconded and the motion carried 3-0.

5. **ORAL ARGUMENTS - NONE**

6. **MOTIONS**

- A. Thaddeous Price v. Department of Agriculture

Mr. Sipek explained that counsel for Appellant requested additional time to file his response to Appellee's Exceptions, which was due while he was on vacation.

Ms. Gibson moved to accept the Appellant's Motion for Additional Time to File Response to Exceptions. Mr. Frazer seconded and the motion carried 3-0.

7. 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; Mr. Gillis 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 3-0. (10:02 a.m.)

Mr. Frazer moved to return to open session. Ms. Gibson seconded and the motion carried 3-0. (10:39 a.m.)

8. 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. Christopher Newton v. Transportation Cabinet

Mr. Gillis moved to note Appellant's exceptions, Appellee's exceptions and Appellant's response and to defer this matter for Board-Ordered oral argument at the August 2009 Board Meeting. Mr. Frazer seconded and the motion carried 3-0.

B. Robert Johnson v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 3-0.

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).

C. Cynthia Stewart v. Justice and Public Safety Cabinet

Mr. Gillis 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. Gibson seconded and the motion carried 3-0.

9. WITHDRAWALS

Mr. Frazer 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 3-0.

- A. Nathaniel Coleman, Jr. v. Personnel Cabinet
- B. Kimberly Johnson v. Personnel Cabinet
- C. Jeffrey Koehn v. Justice and Public Safety Cabinet
- D. Daniel Ball v. Justice and Public Safety Cabinet

10. SETTLEMENTS

Ms. Gibson 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. Mr. Frazer seconded and the motion carried 3-0.

- A. Paul Humphrey v. Public Protection Cabinet (2 appeals)
- B. Jennifer Smith v. Health and Family Services (mediated)
- C. Lisa Clare v. Department of Public Advocacy
- D. Eugenia Jump v. Public Protection Cabinet

11. **OTHER**

Chair Goodman and Mr. Gillis suggested that the Board do a newsletter once or twice a year. The purpose would be to assist state employees in filing appeals and to highlight certain appeals. Chair Goodman offered her assistance to the Personnel Board staff to get it started and advised there were also templates available on-line. She stated it could be formatted as a “pdf” file or it could be web-based. This newsletter could be mass mailed electronically. Mr. Sipek thought it was a good idea.

There being no further business, Mr. Frazer moved to adjourn. Ms. Gibson seconded and the motion carried 3-0. (10:52 a.m.)

Christine J. Goodman, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

Larry B. Gillis, Member