

KENTUCKY PERSONNEL BOARD
MINUTES OF May 11, 2007

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on May 11, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Tina Goodmann, Vice-Chairman
Betty M. Gibson, Member
Lisa T. Hendricks, Member
Rosemary F. Center, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD April 13, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Gibson moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 6-0. The Board members signed the minutes. (Chairman Higgins does not vote unless noted.)

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board Members that a class of mediators was attending the Board meeting as part of their training in the Kentucky Employees Mediation Program, along with Ms. Linda Patrick who oversees that program.

Mr. Sipek informed the Board Members of the passing of former Board Member Timm Hurst. Mr. Crocker read into the record a formal resolution honoring Mr. Hurst, a copy of which is attached hereto. Chairman Higgins asked for a moment of silence to honor Mr. Hurst.

4. **PERSONNEL CABINET'S REPORT**

Secretary Brian Crall, Personnel Cabinet, advised the Board that the liaison for the Kentucky Department of Veterans' Affairs (KDVA), Veterans Benefits Field Representative, is in place and has received favorable feedback.

The reorganization of the Personnel Cabinet has been submitted with no substantive changes, except for a name change from Organizational Employee & Organizational Development (OEOD) to Governmental Services Center (GSC), which was the original name of that office.

The Personnel Cabinet is designing a supervisors' training class called "How to Performance Coach." This training will teach supervisors how to approach progressive discipline. Secretary Crall believes that many appeals filed with the Personnel Board could be averted if supervisors had better skills and training. Before this training is implemented, it will be presented to the Board for any recommendations.

The workforce planning retirement window is not resolved. It is estimated that 8,500 employees will be forced out by 2009. He hopes to have the window changed. A workforce and work planning analysis is being conducted with the hopes of keeping information and skills within the agencies.

The contract for KHRIS (Kentucky Human Resources Information System) has been signed and the vendor is on board. Secretary Crall anticipates this system to be in place within a 20-24 month period.

Secretary Crall advised that he would appreciate the Board approving the proposed changes to regulations 101 KAR 2:046, 101 KAR 2:056 and 101 KAR 2:066, so that he can file them as soon as possible. If the Board does not accept the regulations today, the next filing date would be August 15, 2007.

Information recently came to the attention of Secretary Crall regarding the propriety of an action and, pursuant to KRS 18A.030, the Personnel Cabinet has an obligation to investigate such actions. Secretary Crall, in accordance with KRS 18A.075, presented an investigation in a sealed envelope for the Personnel Board members to review. He asked that the five-page letter be reviewed by the Board Members because it coincided with an action the Board was preparing to rule on. He believes it warrants further investigation and would make himself available by cell phone if the Board had any questions concerning this matter. Chairman Higgins thanked Secretary Crall and stated the Board would respond to his request for investigation as expediently as possible.

5. **PETITIONED POSITIONS** - None

6. **MOTIONS**

- A. Lenny Ausbrooks v. Transportation Cabinet and Marjorie Ann Stewart
 - Appellee's Motion to Alter, Amend or Vacate Board Order
 - Appellant's Response to Motion

Present were Hon. Paul Fauri, counsel for the Appellant, and Hon. Paul Harnice, counsel for Appellee. The parties answered questions from the Board.

7. ORAL ARGUMENTS

A. John Beane v. Transportation Cabinet

Present were the Hon. Paul Harnice, counsel for the Appellee, who had requested oral arguments; and the Hon. Jeff Traugher, counsel for the Appellant. The parties answered questions from the Board.

B. Michael Duncan v. Transportation Cabinet

Present were the Hon. Paul Harnice, counsel for the Appellee, who had requested oral arguments; and the Hon. Paul Fauri, counsel for the Appellant. The parties answered questions from the Board.

After oral arguments concluded in the *Duncan* appeal, Chairman Higgins ordered a short break (11:20 a.m.). Oral arguments resumed at approximately 11:39 a.m.

C. Kathy McAlister v. Justice and Public Safety Cabinet

Present were the Hon. Bob Bullock, counsel for the Appellant, who had requested oral arguments; and the Hon. Will Fogle, counsel for the Appellee. The parties answered questions from the Board.

D. William Wolejsza v. Governor's Office for Local Development

Present were the Hon. Dave Emerson, counsel for the Appellant, who had requested oral arguments; and the Hon. Holly Harris, counsel for the Appellee. The parties answered questions from the Board.

8. CLOSED SESSION

Ms. Hendricks 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. Chairman Higgins 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), (j) and (k), 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 6-0. (12:10 p.m.)

Ms. Gibson moved to return to open session, Ms. Hendricks seconded, and the motion carried 6-0. (2:55 p.m.)

9. **CASES TO BE DECIDED**

MOTIONS:

A. Lenny Ausbrooks v. Transportation Cabinet and Marjorie Ann Stewart

Mr. Frazer moved to defer this matter to the next meeting of the Board. Mr. Andrews seconded and the motion carried 6-0.

The Board reviewed the following cases. At that time, the Board considered 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. John Beane v. Transportation Cabinet

Ms. Hendricks moved to defer this matter to the next meeting of the Board, Mr. Andrews seconded and the motion carried 6-0.

B. Michael Duncan v. Transportation Cabinet

Mr. Frazer moved to dismiss the appeal stating that the Personnel Board does not have jurisdiction to hear it. Chairman Higgins seconded and the motion failed 4-1, with Mr. Andrews, Ms. Center, Ms. Gibson and Ms. Goodmann voting no, and with Ms. Hendricks abstaining.

Chairman Higgins moved to note Appellee's exceptions, Appellant's response, and oral arguments, and to accept the recommended order sustaining the appeal. Mr. Andrews seconded and the motion carried 4-1, with Mr. Frazer voting no, and with Ms. Hendricks abstaining.

C. Kathy McAlister v. Justice and Public Safety Cabinet

Ms. Center moved to note Appellant's exceptions and response, Appellee's exceptions and response, and oral arguments, and to accept the recommended order sustaining the appeal to the extent set forth therein. Ms. Gibson seconded and the motion carried 3-2, with Mr. Frazer and Ms. Hendricks voting no, and with Ms. Goodmann abstaining.

D. William Wolejsza v. Governor's Office for Local Development

Mr. Frazer moved to defer this matter to the next meeting of the Board, Mr. Andrews seconded and the motion carried 6-0.

E. Russell Bingham v. Transportation Cabinet

Ms. Goodmann moved to remand this matter to the hearing officer for the purposes of taking evidence and making findings of fact and conclusions of law regarding the standards used to make the determination of an actual conflict of interest. Mr. Andrews seconded and the motion carried 6-0.

F. David Curtis and Edwin Wickliffe v. Department of Agriculture (2 appeals)

Mr. Andrews moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the Final Order as altered and attached to these minutes. Ms. Center seconded and the motion carried 6-0.

G. Vickie Blackburn v. Education Cabinet

Mr. Frazer moved to note Appellant's Exceptions and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

H. Patricia Lannan v. Finance and Administration Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

I. Gene Pyle v. Justice and Public Safety Cabinet (3 appeals)

Mr. Frazer moved to accept the recommended order dismissing two appeals and sustaining one appeal. Ms. Gibson seconded and the motion carried 6-0.

J. Zachary Rudd v. Environmental and Public Protection Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 6-0.

K. Russell Tiller v. Justice and Public Safety Cabinet

Ms. Center moved to accept the recommended order dismissing the appeal as untimely. Ms. Goodmann seconded and the motion carried 6-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders 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 was no response submitted by the Appellants to the show cause orders.

- L. Scott Cockrum v. Personnel Cabinet
- M. Johnathan Henry v. H&FS & Personnel (2 appeals)
- N. Christopher Hettinger v. Environmental and Public Protection Cabinet and Personnel Cabinet
- O. Judston Hill v. Justice and Public Safety Cabinet
- P. Kanita Lopez-Samayoa v. Justice and Public Safety Cabinet

Ms. Hendricks 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 appeals. Ms. Center seconded and the motion carried 6-0.

10. WITHDRAWALS

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 6-0.

- A. Tom Bryant v. Personnel Cabinet
- B. Diane Bush v. Cabinet for Health and Family Services
- C. Patricia Caudell v. Transportation Cabinet
- D. Jason Feddersen v. Personnel Cabinet
- E. William Jackson v. Personnel Cabinet and Transportation Cabinet
- F. Travis Joseph v. Personnel Cabinet
- G. Ann Mattingly v. Personnel Cabinet
- H. Sabrina Palmer v. Cabinet for Health and Family Services
- I. Anna Reeder v. Personnel Cabinet
- J. Francisco Vasquez v. Justice and Public Safety Cabinet
- K. Joseph Yates v. Justice and Public Safety Cabinet

11. SETTLEMENTS

Ms. Hendricks moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Andrews seconded and the motion carried 6-0.

- A. Laurie Bundy v. Justice and Public Safety Cabinet
- B. Tina Sallee v. Justice and Public Safety Cabinet
- C. Claudette Walker v. Justice and Public Safety Cabinet
- D. Laurie Jones v. Justice and Public Safety Cabinet (2 appeals)
- E. Lesa Watson v. Department of Public Advocacy (2 appeals)

12. OTHER

A. Proposed changes to 101 KAR 2:046, 056 and 066

Mr. Frazer moved to accept the proposed changes, Mr. Andrews seconded and the motion carried 6-0.

B. Investigations

1. Justice Cabinet, Kentucky State Reformatory – request by Patricia Bunt Special favors and exemption from rules (**Deferred from April**).

Ms. Hendricks moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 6-0.

C. Requests for Investigation

The Board discussed the sealed request for investigation presented by Secretary Brian Crall, Personnel Cabinet. Mr. Frazer stated that it looked like documents presented in the Michael Duncan appeal and that the Board should honor Secretary Crall's request to investigate. Mr. Sipek said it appears that the focus of the investigation is the hiring of Michael Duncan. Mr. Andrews requested a chance to review the documents because he was not comfortable making a decision to investigate at this time and said it should be deferred to the next Board meeting. Mr. Frazer moved to authorize the Board to conduct an investigation; however, the motion died for lack of a second. Chairman Higgins wanted to know if there is a statute of limitations. Mr. Sipek stated that this same issue came up in the Doerting investigation. Staff opinion was that the Board can remedy a situation if there is a violation and that the Personnel Board is not bound by any statute of limitations as to a request for investigation. Ms. Goodmann then made a motion to defer this matter to the next Board meeting. Mr. Andrews seconded and the motion carried 5-0, with Ms. Hendricks abstaining. Mr. Frazer then made a motion for Secretary Crall to appear at the next Board meeting to answer questions from the Board members, Ms. Hendricks seconded and the motion carried 6-0.

Chairman Higgins asked if there was any other business to discuss. Mr. Andrews stated that he would like to explain his vote on the Duncan case. Mr. Andrews stated that his vote is based upon the facts of the case, the law, and the principles of statutory construction. Politics have nothing to do with this. He observed that there is coverage in the newspapers regarding the political makeup of the Board. In his opinion, the Board is not colored by partisan politics. He stated that when Governor Fletcher appointed him to the Board the Governor said, "If anyone has been wronged, I want to assure they are made whole." Mr. Frazer said his vote was not made by partisan politics, but how he interpreted the statutes. Chairman Higgins agreed that the Board members take their job seriously, they come prepared and they rule conscientiously.

There being no further business, Ms. Hendricks moved to adjourn, Mr. Frazer seconded, and the motion carried 6-0. (3:21 p.m.)

Greg Higgins, Chairman

Tina Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member