

KENTUCKY PERSONNEL BOARD

MINUTES OF DECEMBER 15, 2006

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on December 15, 2006, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky. The first order of business was to swear in the newest Board member appointed by the Governor, Rosemary Center. She was sworn in by General Counsel Andy Crocker and welcomed by Chairman Higgins.

Board personnel present:

Greg Higgins, Chairman
Tina Goodmann, Vice-Chairman
Bruce E. Middleton, Member
Betty Gibson, Member
Lisa Hendricks, Member
Rosemary Center, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor

2. READING OF THE MINUTES OF REGULAR MEETING HELD NOV. 17, 2006

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Goodmann moved to approve the minutes as submitted, Ms. Gibson seconded, and the motion carried 5-0. The Board members signed the minutes. (Chairman Higgins does not vote unless noted.)

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek welcomed Rosemary Center to the Board. He reported that former Board member Patrick Moores has been appointed to the Executive Branch Ethics Commission.

Mr. Sipek also noted that this was Bruce Middleton's last scheduled meeting before the expiration of his term on January 1, 2007. Mr. Sipek stated that Mr. Middleton had been with the Board longer than any other Board member and longer than any employee. Mr. Sipek stated that Mr. Middleton had been a perfect member to work with. He is always fair and anyone, employee or agency, would want him to decide their case because you were going to get a good, fair and solid analysis of the case. Mr. Sipek stated that Mr. Middleton had served as both Chairman and Vice-Chairman during his tenure and that he could continue to serve on the Board until his replacement was appointed by the Governor. In case he did not return for the January meeting, Mr. Sipek presented him with a plaque commemorating his tenure with the Board and thanked him for his service.

Chairman Higgins stated that Mr. Middleton wished to make a recommendation to the Board.

Mr. Middleton thanked the members of the Board and stated that he had a greater appreciation of state employees than he had eight years ago. He stated that when you considered the number state employees, over 38,000 (compared to the number of appeals), this is still a very small percentage, so somebody was doing something right.

Mr. Middleton stated that he felt that seniority needs to have stronger weight in the five promotion criteria. He would like for the Board to recommend to the Legislature that seniority be given priority in promotions and if not, a written justification should be required explaining why. He doesn't feel it is enough just to say seniority was considered.

Mr. Middleton also stated that he felt that employees were at great disadvantage before the Board, having to pay attorney fees and witness expenses while the agencies had free access to attorneys and witnesses. He recommended that some system be set up to help pay appellants' legal fees, perhaps a small fee assessed from each employee each year to go into an escrow account that could then be used to help appellants pay legal fees and expenses.

Chairman Higgins stated that these were excellent recommendations and they would be considered.

4. **PERSONNEL CABINET'S REPORT**

Hon. Tom Stephens, Acting Executive Director of the Office of Legal Services for the Personnel Cabinet, was present on behalf of the Cabinet. Mr. Stephens stated that on behalf of Secretary Crall, he congratulated Mr. Middleton on his long service to the Board and welcomed Ms. Center.

Mr. Stephens noted that the summary of training had been provided to the Board's staff electronically for last month. He also said that the 2007 health insurance summary plan descriptions had been sent to the Board on disk. They must now be filed as administrative regulations. Two changes have been implemented since the summary plans were provided to the Board: 1) The timeframe for filing an appeal on health insurance issues had been changed from 60 to 180 days; and 2) The Legislative Research Commission had requested that an effective date be included with the plans. That date is January 1, 2007. Mr. Stephens asked if the Board had any questions. None were asked.

5. **PETITIONED POSITIONS: None**

6. **ORAL ARGUMENTS**

A. Stella Aker v. Cabinet for Health and Family Services

Present were Hon. Fred Radolovich, counsel for the Appellant, who had requested oral arguments; and Hon. James R. Dobner, counsel for the Appellee.

B. Lennie Ausbrooks v. Transportation Cabinet and Marjorie Stewart

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

C. Morris Bethel v. Department of Juvenile Justice

Present was Hon. Kimberly Moore, counsel for the Appellee, who had requested oral arguments. The Appellant was not present nor represented by counsel. Ms. Moore answered questions from the Board.

D. Misty Calhoun v. Cabinet for Health and Family Services

Present were Hon. Fred Radolovich, counsel for the Appellant; and Hon. James R. Dobner, counsel for the Appellee, who had requested oral arguments.

E. Jennifer Harrod v. Finance and Administration Cabinet

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

F. Mae Miles v. Kentucky Housing Corporation

Present were Hon. Kent M. Brown, counsel for the Appellant, who had requested oral arguments; and Hon. Edwin A. Logan, counsel for the Appellee.

G. Edward Roby v. Department of Corrections

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

H. Dana Spraggins v. Department of Juvenile Justice

Present were the Appellant, Dana Spraggins; and Hon. Kimberly Moore, counsel for the Appellee, who had requested oral arguments. The parties answered questions from the Board.

I. Wanda Wade v. Finance and Administration Cabinet

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

J. William Wolejsza v. Governor's Office of Local Development

Present were Hon. David Emerson, counsel for the Appellant, who had requested oral arguments; and Hon. Garland A. Barr, counsel for the Appellee.

7. **MOTIONS**

There were no motions before the Board.

8. **CLOSED SESSION**

Ms. Goodmann moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudication; Mr. Middleton 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 5-0. (12:10 p.m.)

Ms. Gibson moved to return to open session, Ms. Goodmann seconded, and the motion carried 5-0. (2:45 p.m.)

9. **CASES TO BE DECIDED**

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. Rebecca Smith v. Department of Veteran's Affairs (Deferred from August)

Mr. Middleton moved to defer this matter to the next meeting of the Board, Ms. Center seconded and the motion carried 5-0.

B. Lowell Workman v. Cabinet for Health and Family Services
(Deferred from August)

Mr. Middleton moved to note Appellant's exceptions, Appellee's response and oral arguments, and to revise the recommended order in accordance with the Final Order attached to these minutes, thereby sustaining the appeal to the extent set forth therein. Ms. Goodmann seconded and the motion carried 5-0.

C. Stella Aker v. Cabinet for Health and Family Services

Ms. Goodmann moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

D. Morris Bethel v. Department of Juvenile Justice

Mr. Middleton moved to note Appellee's exceptions and oral arguments, and to accept the recommended order sustaining the appeal. Ms. Goodmann seconded and the motion carried 5-0.

E. Misty Calhoun v. Cabinet for Health and Family Services

Mr. Middleton moved to note Appellee's exceptions and oral arguments, and to accept the recommended order, as altered and attached to the minutes, sustaining the appeal. Ms. Gibson seconded and the motion carried 5-0.

F. Lennie Ausbrooks v. Transportation Cabinet and Marjorie Stewart

Ms. Hendricks moved to note Appellee's exceptions, Intervenor's exceptions, Appellant's exceptions, Appellant's response to exceptions of both Appellee and Intervenor, Appellee's response to Appellant's exceptions 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 5-0.

G. Jennifer Harrod v. Finance and Administration Cabinet

Mr. Middleton moved to note Appellee's exceptions, Appellant's response and oral arguments, and to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 3-1-1, with Ms. Hendricks voting no and Ms. Goodmann abstaining.

H. Donald Hagy v. Commerce Cabinet

Ms. Goodmann moved to note Appellee's exceptions and Appellant's response, and to accept the recommended order sustaining the appeal. Ms. Center seconded and the motion carried 5-0.

I. Mae Miles v. Kentucky Housing Corporation

Ms. Hendricks moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

J. Edward Roby v. Department of Corrections

Ms. Goodmann moved to note exceptions from Appellant and Appellee, Appellee's response and oral arguments, and to accept the recommended order sustaining the appeal to the extent set forth therein, and to deny the Motion for Stay filed by Appellee. Ms. Center seconded and the motion carried 5-0.

K. Dana Spraggins v. Department of Juvenile Justice

Mr. Middleton moved to note Appellee's exceptions and oral arguments, and to accept the recommended order sustaining the appeal and to deny the Appellee's Motion for Stay. Ms. Goodmann seconded and the motion carried 5-0.

L. Wanda Wade v. Finance and Administration Cabinet

Ms. Center moved to note Appellee's exceptions, Appellant's response and oral arguments, and to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 5-0.

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

Ms. Goodmann moved to remand this case to the hearing officer to take additional proof at the request of the agency. Ms. Hendricks seconded and the motion carried 5-0.

SECOND CLOSED SESSION

Ms. Goodmann moved that the Board again go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudication; Ms. Hendricks 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 5-0. (2:50 p.m.) At this time, Mr. Middleton left the meeting.

SECOND OPEN SESSION

Ms. Goodmann moved to return to open session, Ms. Hendricks seconded, and the motion carried 4-0. (3:20 p.m.)

N. Laura Back v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

O. Robert Burns v. Environmental and Public Protection Cabinet

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

P. DeRyan Caldwell v. Transportation Cabinet and Personnel Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

Q. Lisa Church v. Cabinet for Health and Family Services (2 appeals)

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 4-0.

R. Heidi Compton v. Department of Corrections (2 appeals)

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 4-0.

S. Herman Dunson v. Transportation Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

T. Timothy Gambrel v. Department of Juvenile Justice

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Goodmann seconded and the motion carried 4-0.

U. Regina Goodpaster, Mickie Hudson and Ora Roark v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 4-0.

V. Beth Gribbins v. Environmental and Public Protection Cabinet

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

W. Jennifer King-Couch v. Cabinet for Health and Family Services

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 4-0.

X. Dennis Kitchens v. Department of Juvenile Justice

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

Y. Parisanne Noble v. Transportation Cabinet

Ms. Gibson moved to accept the recommended order as altered and attached to these minutes, thereby dismissing the appeal. Ms. Center seconded and the motion carried 4-0.

Z. Betty Runner v. Cabinet for Health and Family Services (2005-225)

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

AA. Terry Sundy v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 4-0.

BB. Brenda Talley v. Public Service Commission and Personnel Cabinet

Ms. Goodmann moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

CC. Jennifer Yount v. Department of Corrections

Ms. Gibson moved to accept the recommended order sustaining the appeal. Ms. Center seconded and the motion carried 4-0.

10. 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 affidavits were filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses to the show cause orders submitted by the Appellants.

- A. Orion Bazzell v. Cabinet for Health and Family Services
- B. Jerry Clark v. Cabinet for Health and Family Services
- C. Twanishia Davis v. Cabinet for Health and Family Services
- D. Leigh Sullivan v. Personnel Cabinet

Ms. Goodmann 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. Hendricks seconded and the motion carried 4-0.

11. **WITHDRAWALS**

Ms. Hendricks moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Center seconded and the motion carried 4-0.

- A. Crystal Coleman v. Personnel Cabinet
- B. Vanessa Creek v. Personnel Cabinet
- C. Sheila Dansby v. Personnel Cabinet
- D. Terry Dunn v. Personnel Cabinet
- E. Stanley Garland v. Cabinet for Health and Family Services
- F. Carolyn Haner v. Cabinet for Health and Family Services
- G. Deborah Hoard v. Health and Family Services (2 appeals)
- H. Adrienne Mason v. Cabinet for Health and Family Services
- I. Mark McKinney v. Personnel Cabinet
- J. Kraig McWhorter v. Administrative Office of the Courts
- K. Stephanie Meiler v. Personnel Cabinet
- L. Trudi Rose v. Cabinet for Health and Family Services
- M. Roger Sizemore v. Personnel Cabinet
- N. Christopher Williamson v. Cabinet for Health and Family Services
- O. Walter Akers v. Transportation Cabinet
- P. Heidi Compton v. Department of Corrections
- Q. Sherry Jones v. Personnel Cabinet
- R. Joel Martin v. Personnel Cabinet
- S. Claude Ratliff v. Education Cabinet
- T. Cheryl Receveur v. Transportation Cabinet

12. **SETTLEMENTS**

Ms. Gibson 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. Ms. Goodmann seconded and the motion carried 4-0.

- A. Lana Durbin v. Ky. Board of Medical Licensure
- B. Neal Jones v. Workforce
- C. Gary Kitchen v. Transportation Cabinet
- D. Ronald Rich v. Department of Fish and Wildlife Resources and Personnel Cabinet
- E. Shirley Stucker v. Cabinet for Health and Family Services
- F. Larry Daniels v. Education Cabinet
- G. Jo Ann Delaney v. Education Cabinet
- H. Jason Elam v. Education Cabinet
- I. Betty Moran v. Environmental and Public Protection Cabinet

13. **REQUESTS FOR INVESTIGATION**

A. Department of Juvenile Justice Personnel Practices – Request by KASE

Mr. Sipek stated that this request came from Lee Jackson, the President of the Kentucky Association of State Employees, to investigate the reclassification of several employees to see if these actions were actually demotions. A response was received from LaDonna Koebel stating that these actions were voluntary. Hon. Jeff Middendorf was present for the Cabinet to answer any questions. He reiterated that these actions were all voluntary, four of the five retained their same pay grade and no one lost any pay.

Mr. Sipek stated that his only disagreement with Ms. Koebel's response was that he believed reclassification was appealable, even if it was voluntary, because it is listed in the statute as an action that is appealable. He stated that Mr. Jackson's request was well-intentioned, but he did not feel there was anything to investigate. Mr. Jackson had apparently felt these employees had lost their right to appeal, but Mr. Sipek felt they could still appeal these actions. Chairman Higgins asked if their appeal time would not have run by now. Mr. Middendorf stated that the Cabinet could issue letters to these employees pointing out that these actions are appealable. Mr. Crocker said that if the employees had not been given notice of their right to appeal, they would have one year to do so. Chairman Higgins said that he thought a letter setting out those appeal rights would be appropriate.

Ms. Goodmann moved not to conduct an investigation; Ms. Hendricks seconded and the motion carried 4-0.

B. Office of Employment and Training – Nepotism – Anonymous Request

Mr. Sipek stated that this request was an allegation of nepotism and problems with hiring practices. The Cabinet had filed a well-written response prepared by Hon. Dan Egbers. Mr. Sipek said that he felt the Board should not discount the request just because it was anonymous. Chairman Higgins stated that if there was some basis on which to form a belief, then it should be considered. Mr. Sipek said that he agreed with Mr. Egbers that there was no regulation against nepotism, but if you read the whole request, it also points to some problems with hiring practices. He does not see anything that would warrant an investigation, as Mr. Egbers has refuted some of the allegations. Chairman Higgins asked if those affected did not have appeal rights. Ms. Sipek stated that they did.

Ms. Hendricks moved to not conduct an investigation; Ms. Center seconded and the motion carried 4-0.

C. Kentucky Board of Nursing – Timekeeping Issues – Request by Terri Barton

Mr. Sipek stated that this request is from a former employee of the Board of Nursing and raises serious issues as to time and attendance practices in the Credentials Branch. A lengthy response has been received from the Board of Nursing (which the Personnel Board members have not seen until this morning). This response states that Ms. Barton was misinformed and that there

were standards within the agency as to use of flex time and other time and attendance matters. Mr. Sipek said that the complaint certainly raises concerns; however his recommendation is not to investigate, unless the Board wants to defer this matter if it is not ready to act. Chairman Higgins asked what the Board wanted to do. Ms. Goodmann moved to defer this matter to the next meeting; Ms. Gibson seconded and the motion carried 4-0. Mr. Crocker asked if the Board wanted someone from the Board of Nursing and the Appellant to also be present. The Board agreed that would be helpful.

14. **OTHER BUSINESS**

A. Meeting Dates for 2007

Mr. Sipek stated that for the last two years, the Board had met on the third Friday of each month, but before that on second Friday and that it was up to the Board. After some discussion, Ms. Gibson moved that the Board meet on the second Friday of each month in 2007, with the exception of June. The June meeting would be on June 22 to accommodate the schedule of the Executive Director for that month. Ms. Hendricks seconded and the motion carried 4-0.

B. Budget Surplus Suggestions

Chairman Higgins stated that the media has been reporting that the Governor is going to hold town meetings to determine how to spend the state's budget surplus. He said this was an excellent opportunity for the Board to have input in the decision. He stated that merit employees of the state had not received their statutory 5% increments for about five years, but the work remained the same. In fact, their sacrifice may be partly responsible for the surplus. He felt that recommending that they get their 5% increment was within the jurisdiction of the Board.

Ms. Goodmann said that state employees have been asked to do more with less for many years and that the state budget had been balanced on the back of state worker for the last few years. She felt that employees should at least get the federal cost of living increase.

There was further discussion as to what information would be necessary to make a reasonable recommendation and to see where there was the greatest need. The areas of health insurance and state retirement accounts were mentioned as needing to be addressed. Ms. Hendricks said she would like to see some figures as to what the salary increases would actually cost. Ms. Goodmann asked that the staff request the Personnel Cabinet to provide some figures as to what funding the 5% increment would cost.

Mr. Sipek said that he certainly felt that this was an appropriate issue for the Board to look into. If the Board does not suggest funding the 5% increments, he is not sure who will. He also said that if the Board decides to make any recommendation at the February meeting, it should be sent to the leaders of the Legislature.

C. Legislation

Mr. Crocker and Mr. Sipek discussed some minor legislative changes to KRS Chapter 18A that were designed to better implement the Board's review of the Personnel Cabinet's regulations and some other minor housekeeping issues that needed addressing. Mr. Crocker also discussed some proposed bills that he had heard about that might affect KRS Chapter 18A. Ms. Hendricks moved to send these changes to the Legislature; Ms. Center seconded and the motion carried 4-0.

Ms. Hendricks had some questions about the 2007 health insurance regulation, specifically the funding for the increase in the administration of a portion of the program. Mr. Crocker stated that someone from the Personnel Cabinet would need to answer that and he would ask the Cabinet to have someone here at the next meeting. Ms. Gibson moved to defer action on the regulation until then; Ms. Hendricks seconded and the motion carried 4-0.

There being no further business, Ms. Goodmann moved to adjourn, Ms. Gibson seconded, and the motion carried 4-0. (4:05 p.m.)

Greg Higgins, Chairman

Tina Goodmann, Vice-Chairman

Bruce E. Middleton, Member

Betty Gibson, Member

Lisa Hendricks, Member

Rosemary Center, Member