

**KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 13, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on April 13, 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 MARCH 9, 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 advised he received a favorable opinion upholding the Personnel Board on *Boles v. Environmental & Public Protection Cabinet*, a case that dealt with hazardous duty retirement.

Mr. Sipek commended Mr. Crocker for his presentation about the organization, process and responsibilities of the Personnel Board pursuant to KRS Chapter 18A at the State Government Bar Association meeting in March 2007. Mr. Sipek informed the Board that this presentation is available for review on DVD, if anyone is interested in viewing it.

Mr. Sipek mentioned the Statistics for Calendar Year 2006 report, which shows that the Board had 318 appeals pending in January 2006 and 279 pending in December 2006. This was accomplished because the Board had more funds and more Hearing Officers, and also demonstrates there were no lasting effects as a result of the Board's inability to conduct meetings in the latter part of the calendar year.

Mr. Sipek advised the members that they should have received a copy of his letter to Secretary Mark Birdwhistell and a copy of Secretary Birdwhistell's interesting response in the appeal of *Cherilyn Allen v. Health & Family Services*. He further advised that Ms. Allen has filed an appeal in the Franklin Circuit Court.

Mr. Andrews stated he wanted to respond to the report on the 2006 Calendar Year statistics. He stated that according to his calculations 7 percent of the appeals were sustained, 13.6 percent of the appeals were settled, 38.8 percent were withdrawn. Mr. Andrews felt that it was noteworthy to mention that combined, 79 percent of appeals filed were either dismissed or withdrawn. Mr. Sipek responded that was correct and that it was consistent with trends over previous years as well.

4. PERSONNEL CABINET'S REPORT

Mr. Tom Stephens, Executive Director of the Office of Legal Services, Personnel Cabinet, on behalf of Secretary Brian Crall, advised the Board that most of the legislation on personnel issues did not pass. Therefore, Secretary Crall has directed his staff to investigate as to whether some of the proposed changes can be implemented by the Cabinet through administrative regulations. One issue is changes to the policy on written reprimands and their removal from employees' files after a certain amount of time has elapsed. The employee could petition the agency to have them removed. Mr. Stephens stated that this is something that will be easier for the Cabinet to implement than it had in the past due to changes in technology.

Another issue is the notice of intent to dismiss an employee. He stated that there is a five to six-day window where an employee would still be coming to work, but, for example, assigned to different duties. The Cabinet found through a survey that most of these employees find it an uncomfortable situation for them, as well as for management and staff. The Cabinet is looking at a regulation change, perhaps a paid leave provision for employees who have been issued an intent to dismiss.

The last issue the Cabinet is considering is refining sick leave sharing. All of these issues will probably be before the Board in the future, but not anytime soon.

Mr. Stephens reminded the Board that there will be a presentation this afternoon on KHRIS (Kentucky Human Resources Information System). The Board Members can address any issues with Secretary Crall at that time.

Mr. Stephens stated that the Board Members should have been provided working copies of draft regulations which have been updated and refined. He thanked Vice-Chairman Goodmann for providing assistance on grammatical and stylistic problems with the regulations.

Mr. Stephens advised that the Cabinet is also working on refining the employee suggestion system regulation to make it more functional. He further advised that the 2007 Summary Plan description was passed by the administrative regulations subcommittee.

Mr. Andrews asked about the draft amendment to regulations; specifically, he wanted to know the definition of "tiering." Mr. Stephens responded that tiering means different individuals

could have different levels of treatment. He stated that this could be discussed at the KHRIS presentation this afternoon. Mr. Andrews also wanted to know what “exclusively internal mobility candidates” meant. Mr. Stephens responded that internal mobility candidates are merit state employees. An agency can request an internal mobility register, which only contains internal mobility candidates as part of a promotional process.

5. **PETITIONED POSITIONS** - None

6. **ORAL ARGUMENTS**

A. Russell Bingham v. Transportation Cabinet

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

B. David Curtis and Edwin Wickliffe v. Department of Agriculture

--Motion of Personnel Cabinet to Intervene

--Appellant’s Objection to Motion to Intervene

--Personnel Cabinet’s Reply to Appellant’s Response to Motion

Before oral argument commenced on the merits of the case, Mr. Stephens, Personnel Cabinet, argued his Motion to Intervene before the Board. After a lengthy discussion, Mr. Stephens withdrew his Motion to Intervene.

Present were Hon. Nicole Liberto, counsel for the Appellee, who had requested oral arguments; and Hon. Flem Gordon, counsel for the Appellant. The parties answered questions from the Board.

C. Ronnie A. Harvey v. Transportation Cabinet

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

D. Christina Jones v. Personnel Cabinet

Present were Hon. Donald Duff, counsel for the Appellant, who had requested oral arguments; and Hon. Thomas Stephens, counsel for the Appellee. The parties answered questions from the Board.

E. Frances Mullins v. Cabinet for Health and Family Services

Present were Hon. Donald Duff, counsel for the Appellant, who had requested oral arguments; and Hon. Sheila Redmond, counsel for the Appellee. The parties answered questions from the Board.

7. **MOTIONS**

A. David Curtis and Edwin Wickliffe v. Department of Agriculture

This motion was previously addressed at the beginning of the oral argument on this case.

The remaining motions below were discussed in closed session without oral arguments.

B. Lenny Ausbrooks v. Transportation Cabinet and Marjorie Ann Stewart
(Deferred from February and March meetings)

- Motion for Personnel Board to Enforce Order
- Motion for Stay filed by Intervenor in Franklin Circuit Court
- Appellee's Response to Motion to Enforce
- Franklin Circuit Court Order

C. Lowell Workman v. Cabinet for Health and Family Services
(Deferred from March meeting)

- Appellant's Request for Board to Enforce Its Order
- Appellee's Response to Motion to Enforce
- Appellant's Reply to Appellee's Response
- Letter of Compliance

D. John Harris v. Department of Corrections
-- Appellant's Motion to Recuse

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. (11:45 a.m.)

Ms. Goodmann moved to return to open session, Ms. Gibson seconded, and the motion carried 6-0. (1:35 p.m.)

9. A. **PERSONNEL CABINET - PRESENTATION OF KHRIS PROJECT**

Karen Neeley, Department of Personnel Administration, presented the Cabinet's project "Career Opportunities Systems," which is an on-line recruitment system. The Personnel Cabinet serves an average of 31,000 applicants a year. Approximately 150 applicants visit the Personnel Cabinet a day. A survey of 500 applicants revealed that approximately one-third are first-time applicants. There are approximately 1,350 job classifications; however, that does not mean there are openings available in all those job titles. There are three criteria for meeting job classifications: 1) some require written testing, 2) some require that an applicant meet minimal requirements with no testing and 3) some require an applicant to have training and experience above requirements.

Ms. Neeley cited statistics for 2005 and 2006. Basically, some registers are requested by agencies many times per year and some registers are never requested during the year. Fifty percent of the workforce is concentrated in roughly 10-20 of the job titles. Currently, applicants can submit applications via e-mail, fax, walk-in or U.S. mail. Ms. Neeley stated that for large registers agencies rely on the applicants to contact them to express interest.

Mr. Robbie Perkins, Division of Human Resources Projects, explained how applicants now know when there are current job vacancies. Applicants can view vacancies posted on the web-site under competitive job openings or under internal mobility job openings. Current applications can be downloaded in Word or PDF files, which are not user friendly.

Mr. Perkins reported that the new system will be accessed via the Personnel Cabinet's website under the Career Opportunities section. This system will be easier for applicants to search for job openings. First-time users will be able to set up an account and access help links to assist them in filling out the application. Job postings will be more customized to the actual job opening. Applicants will receive confirmation by e-mail that the application was successfully applied. Applications will be saved by the system for future editing and updates. Ms. Neeley stated that applicants will be able to apply on-line at anytime from any computer 24-7 and will not be required to make a trip to Frankfort. Ms. Neeley advised that the old system will be converted into the new system and the target date for the new system to be implemented is October 2007. After the presentation was completed, Ms. Neeley, Mr. Perkins and Secretary Crall responded to questions from the Board. Chairman Higgins thanked the Personnel Cabinet and called for a short break in order to give the Cabinet time to take down their presentation equipment.

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. 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. (2:40 p.m.)

SECOND OPEN SESSION

Ms. Hendricks moved to return to open session. Ms. Gibson seconded, and the motion carried 6-0. (2:50 p.m.)

10. CASES TO BE DECIDED

MOTIONS:

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

Ms. Goodmann moved to grant the Appellant's motion for the Board to enforce order. Mr. Frazer seconded and the motion carried 6-0.

C. Lowell Workman v. Cabinet for Health and Family Services

Ms. Hendricks moved to dismiss as moot Appellant's motion for the Board to enforce order. Ms. Gibson seconded and the motion carried 6-0.

D. John Harris v. Department of Corrections

Mr. Frazer moved to deny Appellant's motion to recuse, but to reassign to another hearing officer. Ms. Hendricks 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. Russell Bingham v. Transportation Cabinet

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

B. David Curtis and Edwin Wickliffe v. Department of Agriculture

Ms. Goodmann moved to defer this matter to the next meeting of the Board. Ms. Center seconded and the motion carried 6-0.

C. Ronnie A. Harvey v. Transportation Cabinet

Mr. Andrews moved to note Appellee's exceptions, Appellant's response and oral arguments, and to accept the recommended order sustaining the appeal. Mr. Frazer seconded and the motion carried 6-0.

D. Christina Jones v. Personnel Cabinet

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

E. Frances Mullins v. Cabinet for Health and Family Services

Mr. Frazer 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 6-0.

F. Terea Snider v. Department of Corrections

Ms. Gibson moved to note Appellants exceptions and to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 6-0.

G. Merrideth Calvert v. Department of Corrections

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

H. George Coleman v. Department of Criminal Justice Training

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

I. Douglas Gregory v. Finance and Administration Cabinet
MOVED TO MAY MEETING

J. Wanda Groves v. Education Cabinet

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

L. Calvin Mayes v. Kentucky State Fair Board

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

M. Regina Moore v. Personnel Cabinet

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

N. Jacqueline Nale v. Cabinet for Health and Family Services

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

O. Tamara Russell v. Personnel Cabinet

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

P. Jessica Sparks v. Cabinet for Health and Family Services and Personnel Cabinet

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

Show Cause Orders – 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. The Appellant filed a statement alleging sufficient cause to excuse her failure to appear at the scheduled hearing.

Q. Melanie McLish v. Department of Corrections

Mr. Andrews moved to accept Appellant's response to the show cause order, with Appellant having shown sufficient cause, and that the appeal be remanded to the active docket for a hearing. Ms. Gibson 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.

R. Robert Little v. Transportation Cabinet

S. Thomas Thieman v. Cabinet for Health and Family Services

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 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. Center seconded and the motion carried 6-0.

- A. James Adams v. Personnel Cabinet
- B. Kenneth Banta v. Personnel Cabinet
- C. Ronnie Barnett v. Personnel Cabinet
- D. Stephanie Blair v. Personnel Cabinet
- E. Andy Boblitt v. Personnel Cabinet
- F. Billy Keith Centers v. Department of Corrections
- G. John R. Clemons, Jr. v. Personnel Cabinet
- H. Bruce Davis v. Department of Juvenile Justice
- I. Linda Douglas v. Health and Family Services
- J. Debra L. Gilbert v. Personnel Cabinet
- K. Bettie Howard v. Cabinet for Health and Family Services
- L. Leah Jeffries v. Personnel
- M. Teresa Mayse v. Personnel Cabinet
- N. Nancy Morris v. Department of Corrections
- O. Russell Tiller v. Personnel Cabinet (5 appeals)
- P. Christy Mercer v. Cabinet for Health and Family Services

11. **SETTLEMENTS**

Mr. Frazer 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. Hendricks seconded and the motion carried 6-0.

- A. Kimberly Abdullah v. Cabinet for Health and Family Services
- B. Stephanie Sue Colyer v. Cabinet for Health and Family Services
- C. Jerry Hayes v. Department of Juvenile Justice
- D. Kyle Howard and James Stevens v. Cabinet for Health and Family Services
- E. Shell Peters v. Department of Juvenile Justice
- F. William Smith v. Department of Agriculture
- G. Billie Huffman, Sheila Pack and Janice Burke Willis v. Environmental and Public Protection Cabinet and Personnel Cabinet

12. **OTHER**

- A. Requests for Investigation
 - 1. Transportation Cabinet, Division of Equipment – anonymous request
Hiring practices and disposal of salvage materials
--Response by James R. Wood, Executive Director, Legal Services

Mr. Sipek stated that the Board received an anonymous request to investigate the Transportation Cabinet's hiring practices and the disposal of salvage materials. Mr. Sipek advised that the disposal of salvage materials is not an issue the Board usually investigates. Mr. Wood was present to respond to the Board and Chairman Higgins invited him to come forward. Mr. Wood advised the Board that the Inspector General's office has been requested to investigate and the matter has been assigned to a contract investigator. Chairman Higgins asked that the Cabinet share the results, which Mr. Wood indicated he would.

Mr. Andrews moved to deny the request for an investigation. Mr. Frazer seconded and the motion carried 6-0.

2. Justice Cabinet, Department of Corrections – request by Andrea Collins
Hiring practices in Wayne County

Mr. Sipek informed the Board that a request to investigate was received by e-mail. Mr. Jeff Middendorf was present to respond to the Board and Chairman Higgins invited him to come forward. Mr. Middendorf stated that Ms. Collins had been interviewed for two positions; however, there were better candidates both times. He informed the Board that Ms. Collins was being interviewed again today.

Ms. Goodmann moved to deny the request for investigation. Mr. Andrews seconded and the motion carried 6-0.

3. Justice Cabinet, Kentucky State Reformatory – request by Patricia Bunt
Special favors and exemption from rules
--Additional information from Ms. Bunt

Mr. Sipek stated that Ms. Bunt filed her request for investigation of ethical violations between Warden Chandler and Cindy Gray by e-mail and followed-up with an additional e-mail. Mr. Middendorf was present to respond to questions from the Board. He informed the Board that this employee was to be terminated for taking pills out of the pharmacy, which were found in her bag. Instead, however, she was given a 10-day suspension. Ms. Bunt then resigned. Mr. Middendorf stated that Ms. Stephanie Appel investigated the matter, but did not find anything to justify Ms. Bunt's complaints. Ms. Goodmann was concerned about expired medications being given to inmates. Although this was not a Personnel Board issue, Mr. Middendorf said he would have this matter investigated. Chairman Higgins asked Mr. Middendorf to share his investigation with the Board, which he said he would.

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

B. June Board meeting date

Mr. Andrews advised the Board Members that he had a scheduling conflict for the Board meeting set for June 21, 2007. After much discussion, the Board agreed to have the meeting on Monday, June 25, 2007.

C. Election of Officers

Chairman Higgins advised that six months ago the Board Members elected officers for a six-month term and that it was time to elect a new Chairman and Vice-Chairman. Ms. Gibson moved to re-elect Greg Higgins as Chairman and Tina Goodmann as Vice-Chairman. Ms. Center seconded. Mr. Andrews said there should be some discussion. He stated in his personal opinion that to have both merit employees as Chairman and Vice Chairman, in his perception, would be unwise. He further stated that the Board should consider either voting for a new Chairman or a new Vice-Chairman, and have an appointed employee as one of the officers. Mr. Frazer agreed with Mr. Andrews. Mr. Andrews said there is no issue of competence, stated or implied. Ms. Gibson withdrew her motion.

Ms. Gibson moved to elect Mr. Higgins as Chairman, Ms. Center seconded, and the motion carried 5-1, with Mr. Andrews voting no.

At this point Ms. Goodmann wanted to know how Ms. Hendricks and Ms. Center felt about having two merit employees as officers and offered to step down as Vice-Chairman. Ms. Center said that both the merit employees have more experience and seniority than the other Board Members. She was fine with the present officers. Ms. Hendricks stated that she did not think it mattered who was Chairman or Vice-Chairman because they all vote individually and that Chairman Higgins has elected not to vote. Mr. Andrews stated that the way the members voted had nothing to do with his objection, it was the perception and it was important that the public and citizens of the Commonwealth understand that this Board is not political nor run and controlled by merit employees. He will vote "no" because he feels it is unwise for the Board to have merit employees in both offices.

After some discussion, Mr. Andrews moved to designate an additional six-month term, ending October 2007, to have Mr. Higgins in the Chairman position. Mr. Frazer seconded and the motion carried 3-2, with Ms. Goodmann and Ms. Center voting no and with Ms. Gibson abstaining.

Ms. Center moved to elect Tina Goodmann as Vice-Chairman, for an additional six-month term. Ms. Gibson seconded and the motion carried 3-2, with Mr. Andrews and Mr. Frazer voting no and with Ms. Goodmann abstaining.

On another note, Ms. Center advised that she will be going to Ireland in November and would miss the November 2007 Board Meeting. Chairman Higgins so noted.

There being no further business, Mr. Frazer moved to adjourn, Ms. Gibson seconded, and the motion carried 6-0. (3:30 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