

**KENTUCKY PERSONNEL BOARD
MINUTES OF FEBRUARY 12, 2010**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on February 12, 2010, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair
M. Suzanne Cassidy, Vice Chair
Betty Gibson, Member
Larry B. Gillis, Member
Wayne. "Doug" Sapp, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

David B. Stevens, Member
David Hutcheson, Member
Boyce A. Crocker, General Counsel (on military leave)

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 8, 2010**

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. Ms. Cassidy seconded, and the motion carried 4-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek informed the Board of the following cases:

- *Cecil Neace v. Health and Family Services*, 06-CI-064, Judge Wingate, Franklin Circuit Court, affirmed the decision of the Board. Issues were raised concerning the makeup of the Board at the time the case was decided and the delay in deciding the case. However, Judge Wingate did not find any problems with those issues.
- *Justice and Public Safety Cabinet, DJJ, v. Anita Johnson Stotts and Personnel Board*, 2009-SC-0570-D, the Supreme Court entered an Order Denying Discretionary Review on January 13, 2010. Mr. Sipek stated the Agency was asking for discretionary review because there was a conflict with other cases where they wanted to restrict the ability of the Board to find facts separate from the Hearing Officer and to either not allow that or to put restrictions on the Board. Mr. Sipek stated that the Supreme Court denied discretionary review and let stand the Court of Appeals decision which found that the Board has the authority to find its own facts even if the facts are different from the Hearing Officer.

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

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, General Counsel for the Personnel Cabinet, came forward to present the Cabinet's report.

- A. Amendments to regulations: 101 KAR 2:034, 101 KAR 2:076, 101 KAR 2:095, 101 KAR 2:102, 101 KAR 3:015, 101 KAR 3:045, and 101 KAR 3:050

A packet containing the above amendments to regulations was given to the Board members for their comments and review. Ms. Bevington stated that there are four regulations pertaining to merit employees and three corresponding regulations pertaining to non-merit employees. Ms. Bevington stated the proposed amendments are basically for housekeeping and/or answering some of the frequently asked questions from agencies. Ms. Bevington then summarized all the proposed amendments for the Board and asked the Board to review the changes in closed session.

5. **Petitioned Position(s)**

A. Public Protection Cabinet

--Special Assistant, Dept. for Alcohol Beverage Control

Present were Susan Smith, Division of Human Resources Management, and Commissioner Tony Dehner. The Alcohol Beverage Control (ABC) Board is requesting approval to establish a Special Assistant, non-merit, position. Ms. Smith stated this position will serve as Special Assistant to the Commissioner of ABC and the primary duties will be to provide general administrative policy and procedural direction to the agency, to monitor legislation tracking, and to assist with budget issues and executive decision making.

Ms. Cassidy asked if this position was replacing one or if it was a new position. Ms. Smith stated that it is a new position. Commissioner Dehner stated that the Agency is below CAP. Ms. Cassidy asked what the starting salary would be. Commissioner Dehner stated it would be \$50,000. Mr. Sipek asked if the Division Directors were currently performing these duties. Commissioner Dehner responded they were, but really did not have time to.

Mr. Gillis moved to approve the petitioned position. Ms. Cassidy seconded and the motion carried 4-0.

B. Cabinet for Economic Development

--Business Development Specialists (6)

Present were Deputy Commissioner Erik Dunnigan and the Hon. Holland Spade. Mr. Dunnigan stated that the Cabinet is requesting approval from the Board to establish six new positions, Business Development Specialist. Mr. Dunnigan stated that the Cabinet has merged two departments into one, the Department for Business Development. Current employees will be promoted into these positions and take on expanded roles. Mr. Gillis asked what would happen to the old positions, once the new positions were filled. Mr. Dunnigan stated that they would be left vacant. Mr. Sipek asked if these positions were created to offer employees more pay or were they policy making positions. Mr. Dunnigan stated both. Mr. Sapp asked if existing employees were performing these duties now. Mr. Dunnigan said no. Mr. Sapp asked about an increase in the number of employees if an existing employee chose not to take the promotion. Mr. Dunnigan said the employee would stay in their current position and

the new position would not be filled. Mr. Sipek asked what classification of employee would be getting these promotions. Mr. Dunnigan responded Economic Development Representative III. Chair Goodmann asked the Board members if they would like to discuss the matter in closed session or vote on it.

Mr. Sapp moved to approve the petitioned positions, as long as there was no increase in the number of employees. Ms. Gibson seconded and the motion carried 4-0.

6. ORAL ARGUMENTS

A. Susan Carter v. Department of Veterans Affairs

Present were counsel for Appellant, the Hon. David Marshall, and counsel for the Appellee, the Hon. James Havey, for oral argument. The parties answered questions from the Board.

B. Joanie Louis v. Department of Veterans Affairs

Present were counsel for Appellant, the Hon. David Marshall, and counsel for the Appellee, the Hon. James Havey, for oral argument. The parties answered questions from the Board.

C. Bradley Mitchell v. Cabinet for Health and Family Services

Present were the Appellant, Bradley Mitchell, and counsel for the Appellee, the Hon. Muriel Varhely, for oral argument. The parties answered questions from the Board.

D. Kenneth Tramontin v. Cabinet for Health and Family Services

Present were counsel for Appellant, the Hon. Don Duff, and counsel for the Appellee, the Hon. Brent Irvin, for oral argument. The parties answered questions from the Board.

7. MOTIONS

- A. Victor Morris v. Justice and Public Safety Cabinet
--Appellee's Motion to Strike 3rd and 4th Set of Exceptions

Mr. Sipek stated that no parties were present and that the Board could discuss the motion now or in closed session.

Ms. Cassidy moved to deny Appellee's Motion to Strike Appellant's exceptions. Mr. Gillis seconded and the motion carried 4-0.

8. CLOSED SESSION

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Sapp 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 4-0. (1:08 p.m.)

Ms. Gibson moved to return to open session. Mr. Sapp seconded and the motion carried 4-0. (2:45 p.m.)

9. 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. Susan Carter v. Department of Veterans Affairs

Mr. Gillis moved to defer this matter to the next Board meeting. Ms. Cassidy seconded and the motion carried 4-0.

B. Joanie Louis v. Department of Veterans' Affairs

Mr. Gillis moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 3-1, with Ms. Cassidy opposing.

C. Bradley Mitchell v. Cabinet for Health and Family Services

Mr. Gillis moved to note Appellant's exceptions, Appellee's response, and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

D. Kenneth Tramontin v. Cabinet for Health and Family Services

Mr. Sapp moved to note Appellee's exceptions, Appellant's exceptions and reply, and oral arguments, and to accept the recommended order sustaining the appeal due to lack of designated authority. Ms. Cassidy seconded and the motion carried 3-1, with Mr. Gillis opposing and Chair Goodmann recusing.

E. Edward Davis v. Tourism, Arts and Heritage Cabinet
(Deferred from January meeting)

Mr. Sapp moved to note Appellee's exceptions, Appellant's response and oral arguments, and to alter the recommended order in accordance with the Final Order attached to these minutes sustaining the appeal to the extent that Appellant's dismissal be modified to a 30-day suspension and that Appellant be required to comply with the return to duty process contained in 39 C.F.R., Part 40, Subpart O, Section 40.305. Ms. Gibson seconded and the motion carried 4-0.

F. Joby Gossett v. Tourism, Arts and Heritage Cabinet
(Deferred from January meeting)

Ms. Cassidy moved to note Appellee's exceptions, Appellant's response and oral arguments, and to alter the recommended order in accordance with the Final Order attached to these minutes sustaining the appeal to the extent that Appellant's dismissal be modified to a 10-day suspension. Mr. Gillis seconded and the motion carried 4-0.

G. Scottie Davis v. Justice and Public Safety Cabinet

Ms. Gibson moved to note Appellee's exceptions and to accept the recommended order sustaining the appeal and that Appellant be reinstated to his former position of Correctional Sergeant or to a position of like status and pay. Ms. Cassidy seconded and the motion carried 4-0.

H. John Holloway v. Transportation Cabinet

Mr. Sapp moved to note Appellee's exceptions and to accept the recommended order sustaining the appeal to the extent that Appellant's reclassification be set aside. Ms. Cassidy seconded and the motion carried 4-0.

I. Neil Honeycutt v. Energy and Environment Cabinet

Mr. Sapp moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 4-0.

J. Randall Arvin v. Transportation Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 4-0.

K. Michael Hedden v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

L. Richard Jones v. Justice and Public Safety Cabinet

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

M. Douglas Neal v. Justice and Public Safety Cabinet

Mr. Sapp moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

N. Jeff Ray v. Transportation Cabinet

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

O. Amber Riley v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order sustaining the appeal and that the 10-day suspension imposed upon Appellant be rescinded. Ms. Gibson seconded and the motion carried 4-0.

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).

P. Andre Arevalos v. Justice and Public Safety Cabinet

Ms. Gibson 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). Mr. Sapp seconded and the motion carried 4-0.

10. **WITHDRAWALS**

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

- A. Lindsey Dawson v. Personnel Cabinet
- B. Juanita Raisor v. Justice and Public Safety Cabinet
- C. Margaret Rice v. Personnel Cabinet
- D. Cassandra Thompson v. Personnel Cabinet
- E. Tammy Weaver v. Transportation Cabinet
- F. Victor Morris v. Justice and Public Safety Cabinet (3 appeals)

11. 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. Sapp seconded and the motion carried 4-0.

- A. Clyde Adams v. Tourism, Arts & Heritage Cabinet (mediated)
- B. Betty Sallee v. Department of Education (mediated)
- C. Kyle Willis v. Justice and Public Safety Cabinet
- D. Rhonda Rickard v. Transportation Cabinet and Sandra Nelson

12. OTHER

- A. Amendments to regulations: 101 KAR 2:034, 101 KAR 2:076, 101 KAR 2:095, 101 KAR 2:102, 101 KAR 3:015, 101 KAR 3:045, and 101 KAR 3:050.

Mr. Sapp moved to defer the amendment to the regulations to the next meeting of the Board. Ms. Cassidy seconded and the motion carried 3-0, with Mr. Gillis recusing.

- B. Doerting Investigation Update – Mr. Sipek said that he hoped to have something for the Board at the April Board meeting.

- C. KRS 18A.0551 [HB 99] (amended) Mr. Sipek stated that it has passed the House and moved to the Senate.

- D. House Bill 149 – Representative Cherry – Mr. Sipek stated that it has passed the House and moved to the Senate.

- E. House Bill 324 (a bill to amend 13B) would enable union representatives to represent Appellants at Personnel Board hearings. Mr. Sipek has learned from Hearing Officer Steve Bolton that this bill has passed the House and has moved to the Senate, Economic and Labor Committee. Mr. Sipek stated that it would be in the Board's interest to express disapproval of this provision as an unauthorized practice of law governed by the Supreme Court. Union representatives are allowed to assist, but they are not attorneys. Mr. Sapp stated that it would be a disservice to Appellants to let them think union representatives were as effective as legal counsel, especially during the appeal process.

Mr. Sapp asked about the state employee election and when the current term would end. Mr. Sipek stated it would end in June. Mr. Sapp was concerned about not being confirmed to the Board and wanted to make sure the Board could perform its functions. If not confirmed, Mr. Sapp, Mr. Hutcheson and Dr. Stevens would only have one more month on the Board. Ms. Gibson expressed concern about whether she will be re-appointed.

Mr. Sipek stated that if the election statute passed, the Board needed to have a regulation ready to present to LRC. He passed out the draft Mr. Crocker had prepared as a guide and hoped to have it in regulation form at the next Board meeting. Mr. Gillis asked if the references to the Kentucky Human Resource Information System (KHRIS) would be taken out, which Mr. Sipek agreed they would.

Lastly, Chair Goodmann stated that Mr. Donnie Hagy has diligently worked on the Personnel Board Newsletter. A copy in .pdf format will be sent to the Board members for review and feedback, before being distributed to all state employees.

There being no further business, Mr. Sapp moved to adjourn. Ms. Cassidy seconded and the motion carried 4-0. (3:07 p.m.)

Christine J. Goodmann, Chair

M. Suzanne Cassidy, Vice Chair

Betty Gibson, Member

Larry B. Gillis, Member

Wayne D. Sapp, Member