

**KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 13, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on March 13, 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
M. Suzanne Cassidy, Member
Julie True, Member
Larry 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 absent:

John Dunaway, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEBRUARY 13, 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. Ms. True seconded, and the motion carried 5-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek advised that both House Bill 304 and HB 325 are continuing to make progress. Both have passed the House and the Senate State and Local Government Committees, and are now pending in the full Senate. Mr. Sipek further added that an amendment was added to HB 325, which relates solely to the Personnel Board Elections, and the Board should know something more by the end of the day.

Mr. Sipek stated that the amendment to regulation 101 KAR 1:325 (probationary periods) is continuing to move along and is in line to be adopted April 3.

Mr. Sipek advised the Board Members that they were welcome to attend Hearing Officer's Training on May 8, 2009, which is put on by the Kentucky Association of Administrative Adjudicators (KAAA). He also advised that the Attorney General's office will hold training in June. Mr. Sipek stated that if any of the members are interested in attending either of these trainings sessions to contact the Board's staff.

Mr. Sipek informed the Board that the Kentucky Court of Appeals affirmed the action of the Personnel Board and the Franklin Circuit Court in the following appeals:

- *Transportation Cabinet v. James Caudill* (2007-CA-001864-MR), rendered February 27, 2009, to be published.
- *Finance and Administration Cabinet v. Jennifer Harrod* (2008-CA-000079-MR), rendered March 6, 2009.

The Franklin Circuit Court entered an Opinion and Order denying the Petitioner's appeal in:

- *Troy Smith v. Cabinet for Health and Family Services*, 08-CI-1502

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

4. **PERSONNEL CABINET'S REPORT:**

Hon. Dinah Bevington, Acting Executive Director for Office of Legal Services, and Commissioner Barbara Barnes were present for the Personnel Cabinet and reported the following:

Ms. Bevington stated that the Kentucky Human Resources Information System (KHRIS) has been delayed and will not go live as planned on March 31, 2009.

Commissioner Barnes stated that there are 200,000 personnel going into the system and includes both Commonwealth employees and non-Commonwealth employees, i.e. teachers. The delay is to meet agency, contract and system needs.

Although the implementation of KHRIS has been delayed, Ms. Bevington stated that the Board members are still invited to see a demonstration of the new system, at a time convenient to the Board, which they should discuss with Mr. Gillis.

An amendment to 101 KAR 2:095, Classified Service Administrative Regulations, will be filed as an emergency regulation when KHRIS is implemented, since the biggest change in the regulation is the Personnel Action Notification (PAN), which replaces the P-1.

Ms. Bevington further stated that the FMLA training scheduled in February has been pushed back as well, since many of the individuals wanting to attend that training have been occupied with KHRIS.

At the conclusion of Ms. Bevington's report, Chair Goodmann asked the parties to come forward for the petitioned position.

5. PETITIONED POSITION:

A. Policy Advisor – Labor Cabinet, Office of the Secretary

Present were Secretary J. R. Gray and Ms. Willie Lile, Director of Management Services. Ms. Lile stated that the Policy Advisor position was a non-merit position. She advised that the office currently has one Policy Advisor, Mr. Daniel Ross. However, Mr. Ross is on extended Family Medical Leave due to a serious medical condition. In Mr. Ross' absence, it is critical to the daily operations of the Labor Cabinet that a qualified individual assume his current job duties. Mr. Gray and Ms. Lile answered questions from the Board members.

Ms. True moved to approve the petitioned position. Mr. Gillis seconded and the motion carried 4-1, with Mr. Frazer opposing.

6. ORAL ARGUMENTS:

A. Antoinette Crawford-Willis v. Tourism, Arts and Heritage Cabinet

Present were the Appellant, Ms. Antoinette Crawford-Willis, *pro se*, and counsel for Appellee, the Hon. Catherine York, for oral argument. The parties answered questions from the Board.

B. Shirley Robbins v. Department of Veterans Affairs

Present were counsel for Appellant, the Hon. Irwin Cutler, and counsel for Appellee, the Hon. Dennis Shepherd, for oral argument. The parties answered questions from the Board.

7. INVESTIGATIONS:

A. Transportation Cabinet Reorganization - Request by Randall Arvin, et al.

Mr. Sipek stated that he wanted to update the Board concerning this matter. Mr. Sipek advised the Board that there are approximately twelve appeals relating to the Agency's reorganization. Two of the appeals have been resolved, one Appellant has withdrawn and one Appellant has been issued a show cause order. The other appeals are moving forward, although

there has been a delay in the proceedings. Ms. Trinta Cox, who is a witness in each of these appeals, is involved in jury duty on the Fen-Phen trial. Two depositions were taken that will apply in all of the appeals; specifically, testimony was provided on the overall issues of the reorganization. However, Ms. Cox will also provide testimony in each appeal to discuss what happened to each Appellant individually. Mr. Sipek stated that information is still being gathered, but the issues that have not been identified yet are the Appellants' complaints specific to KRS Chapter 18A, with respect to the reorganization. Mr. Sipek's recommendation was to leave open the possibility of opening an investigation, but at this time there is no additional information to indicate a reason to start that process now. Mr. Crocker concurred and advised that the appeal process would likely resolve the need for an investigation.

Ms. Frazer moved that the request for investigation be revisited at the July 10, 2009 Board Meeting. Ms. Cassidy seconded and the motion carried 5-0.

8. **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; Ms. Gibson 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 5-0. (11:09 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 5-0. (11:57 a.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. Antoinette Crawford-Willis v. Tourism, Arts and Heritage Cabinet

Mr. Frazer 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 5-0.

B. Shirley Robbins v. Department of Veterans Affairs

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

C. Vicky Wilson v. Cabinet for Health and Family Services
(Deferred from February)

Ms. True 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 sustaining the appeal to the extent the dismissal be modified to a 30-day suspension. Ms. Gibson seconded and the motion carried 4-0, with Mr. Frazer abstaining.

D. Eugenia Jump v. Public Protection Cabinet
(Deferred from February)

Mr. Gillis moved to accept the Final Order as altered and attached to these minutes sustaining the appeal to the extent that the Appellant be granted one-day of sick leave sharing. Ms. True seconded and the motion carried 4-0, with Mr. Frazer abstaining.

E. Diana Schabaker v. Transportation Cabinet
(Deferred from February)

Ms. Gibson moved to note Appellant's exceptions and Appellee's response and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. True seconded and the motion carried 4-0, with Mr. Frazer abstaining.

F. Brenda Savage v. Justice and Public Safety Cabinet (2 appeals)

Mr. Frazer moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeals. Mr. Gillis seconded and the motion carried 4-0, with Ms. Cassidy recusing.

G. Michael Agbor v. Transportation Cabinet – (2 appeals)

Ms. Gibson moved to accept the recommended order dismissing the appeals. Mr. Frazer seconded and the motion carried 5-0.

H. Connie Bennett v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order sustaining the appeal to the extent a 20-day suspension was reduced to a written reprimand. Ms. Gibson seconded and the motion carried 4-0, with Ms. Cassidy recusing.

I. Tyrone Silver v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 5-0.

J. Josh Thompson v. Justice and Public Safety Cabinet

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

K. Freddie Tooley v. Transportation Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal as moot. Ms. Gibson seconded and the motion carried 5-0.

Show Cause Orders – Appeals Dismissed - No Response Filed

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 were no responses submitted by the Appellants to the show cause orders.

L. Valeciea Booth v. Cabinet for Health and Family Services

M. Mildred Collett v. Transportation Cabinet

N. Stephen Lanham v. Transportation Cabinet

Ms. Gibson 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. Mr. Frazer seconded and the motion carried 5-0.

10. **WITHDRAWALS:**

Ms. Cassidy moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. True seconded and the motion carried 5-0.

A. Van Ed DeRossett v. Tourism, Arts and Heritage Cabinet

B. Robin Lawson v. Personnel Cabinet

C. Revel V. Lewis III v. Personnel Cabinet

D. Elizabeth Stivers v. Personnel Cabinet

E. Ada Phoebe Arroyo v. Education and Workforce Development Cabinet

F. Melissa DeLuca v. Justice and Public Safety Cabinet

G. Andrienne Mason v. Cabinet for Health and Family Services

H. Jenny Wilson v. Transportation Cabinet

11. **SETTLEMENTS:**

Ms. Gibson moved to consider the following settlements and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Ms. True seconded and the motion carried 5-0.

- A. Anna M. Clay v. Transportation Cabinet
- B. Kimberly Cribbs v. Department of Public Advocacy
- C. Russell Tiller v. Justice and Public Safety Cabinet
- D. Veachel R. Adwell, David Wallen and Bryan Martin v. Tourism, Arts and Heritage Cabinet
- E. Russell Bingham v. Transportation Cabinet
- F. Mabel Murray v. Justice and Public Safety Cabinet
- G. Julian "Alex" Reese v. Public Protection Cabinet and Finance and Administration Cabinet
- H. Shawn Sanders v. Transportation Cabinet

12. **OTHER:**

Mr. Sipek stated that a photographer will be taking pictures of the Board members at the April 17, 2009, Board meeting at 9:00 a.m.

Chair Goodmann asked about the status of other outstanding investigations.

Mr. Sipek stated that he has interviewed Ms. Rebecca Smith. Mr. Crocker stated that a few individuals still needed to be interviewed and this investigation could probably be wrapped up rather quickly.

Mr. Crocker advised that the Doug Doerting investigation and the Patton Database investigation are still open.

Chair Goodmann stated that some of these investigations have been outstanding for over four years and needed to be completed.

Ms. Cassidy requested that the Board members be provided with background information.

At the request of Chair Goodmann, Mr. Sipek stated that he will provide either a status report or recommendations next month or will have a hearing officer assigned.

There being no further business, Ms. True moved to adjourn. Mr. Gillis seconded and the motion carried 5-0. (12:07 p.m.)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

Suzanne Cassidy, Member

Julie True, Member

Larry Gillis, Member