

KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 11, 2011

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Suzanne Cassidy on March 11, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky¹.

Board Personnel Present:

M. Suzanne Cassidy, Vice Chair
Larry B. Gillis, Member
David F. Hutcheson, Jr., Member
Wayne "Doug" Sapp, Member
Susan Gardner, 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:

David B. Stevens, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEBRUARY 11, 2011**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Cassidy asked for additions or corrections. Mr. Sapp moved to approve the minutes, as submitted. Mr. Gillis seconded, and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek was pleased to introduce Ms. Gwen McDonald who joined the Board's staff on February 16, 2011, as an Administrative Specialist III.

¹ Chairman Cecil Dunn was not confirmed by the Senate and, thus, was off the Board as of March 9, 2011.

Mr. Sipek advised that he will have investigative reports completed and ready for the Board's review next month.

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

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, Executive Director for the Office of Legal Services, came forward to present the Cabinet's report.

Ms. Bevington stated that Kentucky Human Resource Information System (KHRIS) will be ready to go live on April 4, 2011. The employees are testing the system, providing training, and everything looks good. She said that kinks are expected and the Cabinet will work through those as they go along.

A. Amendments to 101 KAR 1:325, Initial Probationary Periods

The Personnel Cabinet reviewed and cleaned up the regulation, as some of the titles were abolished or titles were changed. Also, some of the agencies requested that initial probationary periods be changed. Mr. Sipek stated that Ms. Gardner proposed taking out the language under Section 1(4): "If an applicant is appointed to a position from a competitive register, the appointment shall be considered an initial appointment." Mr. Sipek stated that he spoke with Hon. Dan Egbers and was advised the language originated from the Public Protection Cabinet. Mr. Sipek stated that this language pre-dates internal mobility; therefore, the language is confusing and it is recommended that this language be taken out. Ms. Bevington agreed.

Mr. Gillis advised that before approving this regulation, that not only does this regulation relate to initial probationary periods, it also relates to promotional. Mr. Gillis advised changing the regulation to include promotional.

Mr. Sipek suggested deferring this regulation to the next Board meeting. Ms. Bevington advised that KHRIS is not set to handle any changes when it goes live; therefore, legislative or regulatory changes may not be implemented until August 2011. Mr. Crocker stated that the Legislative Research Committee (LRC) can place a hold on the regulation until it is ready to be heard. Mr. Crocker stated that he talked with Ms. Donna Little at LRC and if the regulation was filed in April, the earliest effective date would be August. Chair Cassidy asked if there was a motion to defer.

Mr. Hutcheson moved to defer this matter to the next Board meeting. Ms. Gardner seconded and the motion carried 5-0.

B. Emergency Regulation Amendments [101 KAR 2:095E – Classified Service; 101 KAR 2:102 – Classified Leave; and 101 KAR 3:015 – Unclassified Leave]

Ms. Bevington provided the Board with a summary sheet indicating the changes to the emergency regulations. These changes are for the purpose of KHRIS [i.e. adding the 40-hour work week and replacing P-1 forms with Personnel Action Notifications (PAN)]; no policy changes or changes impacting employees are being made.

Ms. Gardner moved to approve the Personnel Cabinet’s Emergency Regulation Amendments. Mr. Hutcheson seconded and the motion carried 5-0.

At the conclusion of the Personnel Cabinet’s report, Chair Cassidy asked the parties to come forward for the first oral argument.

5. ORAL ARGUMENTS

A. Charles Clement v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, Hon. Paul Fauri, and counsel for Appellee, the Hon. Jon Klein. The parties answered questions from the Board.

B. Terry Farmer v. Transportation Cabinet

Present for oral argument were counsel for Appellant, Hon. Paul Fauri, and counsel for Appellee, the Hon. William Fogle. The parties answered questions from the Board.

C. Elsworth Turner v. Transportation Cabinet

Present for oral argument were counsel for Appellant, Hon. James Dean Liebman, and counsel for Appellee, the Hon. William Fogle. The parties answered questions from the Board.

6. CLOSED SESSION

Mr. Sapp moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Gillis seconded. Chair Cassidy 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. (10:55 a.m.)

Mr. Gillis moved to return to open session. Mr. Hutcheson seconded and the motion carried 5-0. (11:58 a.m.)

7. 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. Charles Clement v. Cabinet for Health and Family Services

Mr. Sapp moved to note Appellant's exceptions and oral argument and to defer this matter to the next meeting of the Board. Mr. Hutcheson seconded and the motion carried 5-0.

B. Terry Farmer v. Transportation Cabinet

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's Response and oral argument and to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 5-0.

C. Elsworth Turner v. Transportation Cabinet

Mr. Sapp moved to note Appellant's exceptions, Appellee's exceptions, Appellee's response and oral argument and to defer this matter to the next meeting of the Board. Ms. Gardner seconded and the motion carried 5-0.

D. Lisa Bannister v. Cabinet for Health and Family Services

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

E. Charles Weaver v. Personnel Cabinet and Transportation Cabinet

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

Show Cause Orders – Appeal Dismissed - No Response Filed

The following cases had a show cause order 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.

F. Jeffrey Dean v. Justice and Public Safety Cabinet

G. Christopher Jones v. Transportation Cabinet

H. Kevin Lawson v. Transportation Cabinet

I. Vickie Shipp v. Cabinet for Health and Family Services

J. Michael Sievert v. Justice and Public Safety Cabinet

Mr. Hutcheson 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 appeal. Ms. Gardner seconded and the motion carried 5-0.

8. WITHDRAWALS

Mr. Gillis 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 5-0.

- A. Keith Hunter v. Justice and Public Safety Cabinet
- B. David Ripple v. Personnel Cabinet
- C. Constance Jones v. Justice and Public Safety Cabinet
- D. Dallas "Eddie" Kelly v. Energy and Environment Cabinet

9. SETTLEMENTS

Ms. Gardner moved to defer the following settlement to the next Board meeting. Mr. Hutcheson seconded and the motion carried 5-0.

- A. Adanne Bagby v. Cabinet for Health and Family Services
(Passed from Feb. meeting)

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

- B. Jackie Braden v Department of Public Advocacy (mediated)
- C. Angela Redwine v. Department of Public Advocacy (mediated)
- D. Stephanie Berry v. Cabinet for Health and Family Services (mediated)
- E. Vincent Gross v. Justice and Public Safety Cabinet
- F. Michelle Stevens v. Cabinet for Health and Family Services (mediated)

10. OTHER

Before adjourning, Mr. Gillis asked that an election be held for Board Officers. After some discussion, Mr. Gillis moved that officers for Chair and Vice-Chair be held. Mr. Hutcheson seconded and the motion carried 5-0.

Election of Board Officers:

Ms. Cassidy asked for nomination for Chair.

Mr. Sapp moved to elect Vice-Chair Suzanne Cassidy as Chair. Mr. Hutcheson seconded and the motion carried 4-0. Ms. Cassidy did not vote.

Chair Cassidy asked for nomination for Vice-Chair.

Mr. Hutcheson moved to elect Mr. Larry Gillis as Vice-Chair. Ms. Gardner seconded and the motion carried 4-0. Mr. Gillis did not vote.

Chair Cassidy asked if there were any other matters to discuss.

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

M. Suzanne Cassidy, Chair

Larry B. Gillis, Vice Chair

David F. Hutcheson, Jr., Member

Wayne D. Sapp, Member

Susan Gardner, Member