



New Mexico State Personnel Board State Personnel Office

SUSANA MARTINEZ
GOVERNOR

Justin Najaka
Director

State Personnel Board
Christine B. Romero, Chair
Jerry Manzagol, Vice Chair

Nivia L. Thames
Deputy Director

State Personnel Board Special Meeting
State Personnel Office
2600 Cerrillos Road
Santa Fe, NM 87505
April 5, 2018
Minutes

Megan Muirhead Carmen V. Chavez

I. Procedural Items

Call to Order

The meeting of the State Personnel Board (SPB) was called to order by Chair Romero at approximately 9:01 a.m. on April 5, 2018, at the State Personnel Office (SPO), Santa Fe, New Mexico.

Roll Call

Director Justin Najaka called roll and a quorum was established with the following members present:

Christine B. Romero, Chair
Jerry Manzagol, Vice Chair
Megan Muirhead, Board Member

Carmen V. Chavez, Board Member was not present for the meeting.

Invocation David Berry

Pledge of Allegiance Stuart Hamilton

Approval of Agenda

Board Member Muirhead moved to approve the April 5, 2018, State Personnel Board Agenda; seconded by Vice Chair Manzagol. Motion carried.

2600 Cerrillos Road, Santa Fe, New Mexico, 87505 (505) 476-7759



Approval of Minutes – January 19, 2018

Board Member Muirhead moved to approve the January 19, 2018 State Personnel Board minutes, seconded by Vice Chair Manzagol. Motion carried.

II. Director's Report

Director Najaka provided the following updates:

1. 2018 New Mexico Legislature

Moses Winston, State Personnel Office General Counsel provided an update regarding the 2018 legislative session. The legislative session was a short 30-day session this past January and February. The State Personnel Office had four (4) bills for this session. Two (2) similar types of items in separate chambers. The first two bills were the Employee Preference Act, commonly the Right to Work bill. We presented that again this session. We had Senator Ingle on the Senate side and Representative Scott and Representative Townsend on the House side. Both bills were assigned to the two Committees and was not moved out of either side. We were assigned to Senate Public Affairs and Labor and Economic Development. The Senate Public Affairs was a very quick bill, it was tabled quickly with minor comments. Labor and Economic Development was a longer Committee Hearing but was tabled. However we have an upcoming case in the matter of Janus v. AFSCME, a case that took place in Illinois. The United States Supreme Court heard arguments on February 26, 2018. So we should hear a decision early this summer. A similar California case was heard by the United States Supreme Court. Unfortunately the Court deadlocked at 4/4 due to the untimely passing of Justice Scalia. But we do have a full Court now, so the case should move forward. The other bill included the changes to the State Personnel Act that would transfer Human Resources; the consolidation bill. It contained four parts that would create the ability to charge agencies and have the same SPO oversee all HR. We had House Bill 234, which was Representative Jimmie Hall, and Senate Bill 235. We ran those concurrently on both sides of the legislature. The House Bill did not get much traction. The Senate Bill was more encouraging – we were assigned to the Senate Public Affairs Committee. So we were encouraged; it made sense to a lot of the legislators, but we were never heard by the Committee. Director Najaka and I worked hard. It did not get a lot of push back, and it made sense to many. It was well received and not overly political just takes a while to move forward. So one was tabled and the other was not heard by the Committee. That is the overview as it was a lower volume session. Chair Romero thanked Mr. Winston for all his efforts and the support for the consolidation. Member Muirhead asked for a summary of the Employee Preference Act (EPA). Mr. Winston explained that the focus of the EPA is on the compulsory union dues – right now, if you are a non-union member in a bargaining unit classification, you have to pay fair share, portion of dues that go to nonpolitical activities. It is a compulsory charge if the employee wants to be in that position they must pay the dues to the union. This is for exclusive representation for the union – the union must represent everyone in the bargaining unit, not just union members. The alternative is a members only union, but it would not be the exclusive representative. So it



gives the union a lot of power to negotiate, but it also means they have to represent everyone. The union views it as a free rider if it does not charge those people. If their members get a raise, then these positions get a raise. The Supreme Court is looking at it differently. The public sector unions have been under scrutiny of the courts for a long time now. 1966 was one of the bigger cases, and the case mentioned previously out of California. Unions have gotten so political, by the fact that they are talking to the state and in effect lobbying the state for benefits – inherently political – and requiring individuals to pay toward that goes toward their First Amendment rights. So that’s what the Supreme Court is talking about; it’s that compulsory union dues aspect and how it relates to the First Amendment. We should have a decision from the Court over the summer.

2. HR Consolidation

The general fund and non-restricted fund agencies are consolidated and we continue to move forward with it. We have more staff due to the State Personnel Office (SPO) being a larger organization, but that also means that some staff has left. We have five individuals who have left the organization since the last meeting. Benito Garcia has moved on to the City/County of Albuquerque; Mike McEuen who is regularly in front of the board has also left. Mr. Garcia and Mr. McEuen both lived in Albuquerque and the daily commute is definitely a consideration. Stephanie Sloman moved to the Public Defender Department; Patricia Jauregui has retired; and Bernadette Perez has moved on to Deputy ASD Director at the Department Public Safety in Santa Fe. SPO has five new employees that have started since the last meeting. Regina Sena and Hannah Crider are both in Employee Service Center; Brandie Duncan has joined us in Workforce Planning; Carolyn Spidle has joined us in IT; and Ken Swain is a new attorney here. SPO is extremely happy and pleased to have these individuals be part of the team. Chair Romero welcomed them. SPO is working extremely hard as we have 36 agencies consolidated. Talent as we have consolidated, don’t think it has anything to do with the consolidation, but we are working them in three (3) areas right now but even as of today we have hit the highest number of active job postings since implemented NEOGOV back in 2012. We have 699 active job postings on the website. Chair Romero asked if some of these positions were frozen. Director Najaka indicated that the positions were never frozen. It is the agencies decision when to fill positions and it is based on their own budget and budget needs. It is typical to see more job postings after the session because more hiring managers are available to conduct interviews. As soon as agencies are ready to advertise and fill positions, SPO is there to help them. Chair Romero asked about the turnaround time from the time the job is posted to when the position is filled. Director Najaka indicated, with Talent as well as other areas we have changed our process a little bit. In the next quarter, which is the 3rd quarter that started in January and just ended March 31st, we are going to see some different numbers as we are transitioning during this quarter. As we implemented the consolidated model, we are using the old process and the new process, we had to close everything out on the old process using the existing process for anything that had started that goes for all the Centers of Excellence. Anything started before January 17th, and using the new process after that date. We should be getting new numbers soon but I have heard many positive comments. At the legislative session during one of our hearings on the consolidation,



Secretary Jablonski stood up and was very thrilled with the shorter amount time to get his folks their employment lists. And we have heard many good things from others as well. We have hit some speed bumps along the way but as we are growing and changing it is nothing we didn't expect. The Employee Service Center is doing extremely well. Katrina from the Employee Service Center reported that they have received 1,989 calls, completed 649 emails, and have scanned 147 files. Chair Romero thanked them for all the hard work. Director Najaka is very proud of everyone's efforts with the consolidation.

III. General Public Comment

No individuals signed up for General Public Comment.

Chair Romero reminded that the State Personnel Board allows anyone to come to the podium and talk to the board on any issues/concerns that they would like to discuss.

IV. Adoption of the Property & Casualty Classification Study

Cliff McNary, SPO State Classification and Testing Manager presented the request for the approval and adoption of the Property & Casualty Adjuster classification study. Mr. McNary stated that agenda item V (Worker's Compensation Adjuster Classification Study) is related to this item. The current classification in use of Claims Adjuster, Examiner & Investigators is outdated and doesn't address the contemporary industry standards requiring not only the separate yet independent disciplines of property & casualty from workers' compensation, but also the recent requirement of licensure as a Professional Adjuster that is in step with 49 other states. It is important to break these two into their own specific classification descriptions. Because Risk Management Division must stay viable on pay in the face of highly competitive adjuster salaries paid in the local and regional industry markets, the State Personnel Office also recommends the adoption of the market adjusted pay bands. Due to recent natural disasters in the US, adjuster salaries have skyrocketed, making recruitment and retention of qualified adjusters a challenge. We are requesting to have the two pay bands market adjustments on these in order to retain and attract more qualified candidates. It is important to split these two disciplines out as they are not interchangeable, you can't go from Workers' Compensation over to Property & Casualty, you need to commit to one path. Implementation of this study impacts 5 FTE on the Property and Casualty side at the General Services Department's Risk Management Division. Division Director Lara White Davis at Risk Management from GSD was present and she expressed how grateful she is to the State Personnel Office for their interest and assistance in helping to get these positions classified. She indicated that these positions require a specific skill set and need the best candidates to help people in the worst of times. These positions in the correct pay band to get the right people in that are able to analyze these problems for the State at the proper level. Mr. Rod Crowley Bureau Chief at Property & Casualty at the Risk Management Division from GSD was also present.

Vice Chair Manzagol moved to approve the Property & Casualty Adjuster Classification Study; seconded by Board Member Muirhead. Motion carried.

V. Adoption of the Workers' Compensation Adjuster Classification Study

Cliff McNary, SPO State Classification and Testing Manager presented the request for the approval and adoption of the Workers' Compensation Adjuster Classification Study. Mr. McNary stated that this item is related to agenda item IV (Property & Casualty Adjuster Classification Study). This item was addressed in the previous agenda item, regarding the issue in both of these classifications. The implementation of this study impacts 7 FTE on the Workers' Compensation side at General Services Department's Risk Management Division.

Vice Chair Manzagol moved to approve the Workers' Compensation Adjuster Classification; seconded by Board Member Muirhead. Motion carried.

VI. WIC Staff Manager Update

Cliff McNary, SPO State Classification and Testing Manager presented the request for the (Women, Infants & Children) WIC Staff Manager Classification description. After meeting with the agencies that utilize The State Personnel Office recommends that the State Personnel Board approve the proposed updates. Due to the unique requirements of the federal WIC Nutritional Program, Department of Health (DOH) is requesting updates to the Manager Concept of the job descriptor to make optional the requirement of supervising a minimum of two (2) classified FTE. Due to limited funding and the subsequent structural difficulties caused by the stringent federal requirements to deliver and maintain WIC services, DOH is unable to require every WIC Program Manager to directly supervise employees in the WIC Program. DOH is also requesting updates to the minimum qualification standards to return to the original qualification statement and standards of the generic Staff Manager classification. The former language captures the qualification standards the WIC Program requires. WIC Statewide Program Managers participate in the Statewide WIC Management Team in order to ensure consistent management of the WIC Program and interpretation of the USDA WIC policies and procedures. They manage special projects in the community related to health initiatives and initiate the acquisition of funds for infrastructure projects to include new construction and building remodeling. This request only impacts employees at the Department of Health. Member Muirhead asked if the Department was not finding candidates with the minimum qualification standards. Kerry Thomson, Deputy Director at the Department of Health was present and indicated that they have 76 Public Health Offices. The qualifications was designed as to a focus to hire individuals that supervise regions and the contracts out in the field but it was not meeting the purpose for the program staff at the Public WIC State Office. The program staff managers have many specific sections and many different functions. Chair Romero asked if this position isn't necessary managing people but is managing programs. Ms. Thomson indicated that was correct. Teresa Padilla from the Department of Health was also present and indicated that the way they would distinguish between the two uses of the classification would be the working title of the specific position. The Department would be very clear when recruiting and implementing these positions which

ones are state wide program managers and managers that would be managing staff in the different areas.

Vice Chair Manzagol moved to approve the WIC Staff Manager Update; seconded by Board Member Muirhead. Motion carried.

VII. Executive Session

Board Member Muirhead moved that the State Personnel Board meeting be closed. The authority for closing the meeting is under the Open Meetings Act NMSA 1978, Section 10-15-1(H)(3), for deliberations in connection with an administrative adjudicatory proceeding, for the matters listed on the agenda; second by Vice Chair Manzagol.

Director Najaka called roll and all members voted in the affirmative. **Motion carried.**

The Board met in Executive Session from approximately 9:40 a.m. to 9:45 a.m.

For the record, the matters discussed in closed session were limited to those specified below in the Motion to close.

- 1. Gonzalez v. New Mexico Corrections Department; Docket No. 16-044**
After careful consideration of the Administrative Law Judge's proposed findings of fact, analyzes of the relevant law and/or policies in light of the proposed findings of fact of the Recommended Decision and the parties' exceptions, if any, to the Recommended Decision in *Gonzalez v. New Mexico Corrections Department, Docket No. 16-044*, **Vice Chair Manzagol moved to adopt the Administrative Law Judges' Recommended Decision. Motion seconded by Board Member Murihead. Motion carried.**
- 2. Villarino v. NM Children, Youth and Families Department; Docket No. 16-042**
After careful consideration of the Administrative Law Judge's proposed findings of fact, analyzes of the relevant law and/or policies in light of the proposed findings of fact of the Recommended Decision and the parties' exceptions, if any, to the Recommended Decision in *Villarino v. New Mexico Children, Youth and Families Department, Docket No. 16-042* **Board Member Muirhead moved to adopt the Administrative Law Judges' Recommended Decision. Motion seconded by Vice Chair Manzagol. Motion carried.**

VIII. Litigation Update

Jessica Cooper, Administrative Law Judge, presented the Litigation Update. In February and March, Adjudication received 6 new appeals and disposed of 8. Currently 24 appeals pending. Update on appeals of Board decisions: The Board's decision in Rojo v. Department of Military Affairs has been appealed again. The Board initially upheld the dismissal of Mr. Rojo, Mr. Rojo appealed, and on remand from District Court, the Board reduced Mr. Rojo's discipline to a 30-day suspension and awarded him back pay and benefits from the date of the District Court's final Order in the matter. Mr. Rojo filed his latest appeal with District Court again, assigned to Judge Ortiz. The Board's decision in Ortega v. New Mexico Corrections Department has been appealed. In that case, questions about the *Criminal Offender Employment Act* were raised, and the Board upheld Mr. Ortega's dismissal on the basis of his second DWI offense. Mr. Ortega filed his appeal with District Court, and it has been assigned to Judge Ortiz as well. Mr. Ortega has already moved the District Court to certify the matter to the Court of Appeals. Finally, the matter of Kneale v. New Mexico Children, Youth and Families Department, which came before the Board five years ago, in 2013, was dismissed by the Court of Appeals based on the parties' own stipulation of dismissal with prejudice. No dispositive action to report in the seven other Board decisions currently on appeal. Member Muirhead asked who counsel was in the Ortega matter. Jessica Cooper indicated that Hans Voss is counsel for Mr. Ortega.

IX. Other Business – Next Meeting Date: April 20, 2018

The meeting date had to remain April 20th as it is a regular scheduled meeting and to present the operating budget to the board for submission of the operating budget to DFA by May 1st.

X. Adjournment

With no further business, **Board Member Muirhead moved to adjourn the State Personnel Board meeting at approximately 10:00 a.m.; seconded by Vice Chair Manzagol. Motion carried.**

Approved by:


**Christine B. Romero, Chair
State Personnel Board**

Attest:



Justin Najaka, Director

