



New Mexico State Personnel Board State Personnel Office

SUSANA MARTINEZ
GOVERNOR

Justin Najaka
Director

Nivia L. Thames
Deputy Director

State Personnel Board Meeting
State Personnel Office
2600 Cerrillos Road
Santa Fe, NM 87505
March 29, 2017
Minutes

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

Megan Muirhead

I. Procedural Items

Call to Order

The meeting of the State Personnel Board (SPB) was called to order by Chair Romero at approximately 9:00 a.m. on March 29, 2017, at the State Personnel Office (SPO), Santa Fe, New Mexico.

Invocation David Berry

Pledge of Allegiance Michael McEuen

Roll Call

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

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

Approval of Agenda

Board Member Muirhead moved to approve the March 29, 2017, State Personnel Board Agenda; seconded by Board Member Manzagol. Motion carried.

Approval of Minutes – January 23, 2017 and March 6, 2017

Board Member Muirhead moved to approve the January 23, 2017, State Personnel Board meeting minutes; seconded by Board Member Manzagol. Motion carried.

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



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Board Member Muirhead moved to approve the March 6, 2017, State Personnel Board meeting minutes; seconded by Board Member Manzagol. Motion carried.

II. Director's Report

Director Najaka provided the following updates:

1. Introduction of Assistant Attorney General

Director Najaka introduced John Grubestic, Assistant Attorney General, who will provide Legal Counsel to the New Mexico State Personnel Board.

2. Legislative Update

Moses Winston, General Counsel, provided the Legislative Update.

Eight minimum wage bills were introduced:

Two bills went through the process and passed both chambers.

SB 386 raises the minimum wage to \$9.00 per hour and would cost the state \$958,000.

HB 442 raises the minimum wage to \$9.25 per hour and would cost the state \$1.2 million

There were two SPO sponsored bills:

Right to Work Bill was introduced and relates to union membership dues. This was the 3rd time in three legislative sessions that the bill was introduced.

PERLB Bill clarified enforcement powers of the Public Employee Labor Relations Board.

3. HR Consolidation

Two subcommittees have been formed related to the HR consolidation.

One subcommittee is working on policies and the other subcommittee is working with the General Services Department (GSD) concerning location and office space.

The HR Steering Committee is also working with the New Mexico Department of Information Technology (NMDOIT) in developing and establishing the HR Call Center.

The framework for the plan is almost complete and the information will be posted on the SPO website by next week.

4. Reduction in Force (RIF) Candidates

Andrea Rivera-Smith, Career Services Division Director, presented the Board with an update on the current RIF candidates. There are currently six RIF candidates and these employees have staggering dates as to when their RIF rights will end. The RIF rights for the Tourism Department employees will end on April 7, 2017.

Chair Romero asked how the current hiring freeze will affect the RIF candidates. Ms. Rivera-Smith stated that the RIF candidates will have RIF rights to any positions they apply for as long as they meet the minimum qualifications. The positions they apply for must be the same pay band or lower in order for them to utilize their RIF rights.

5. Hiring Freeze

On March 23, 2017, Governor Martinez issued an Executive Order Hiring Freeze to all cabinet secretaries and agency heads under the Executive branch. Some positions will be exempt from the hiring freeze, and these positions will be reviewed on a case by case basis.

Board Member Manzagol asked if there is a possibility of furloughs. Director Najaka stated that furloughs have been mentioned as a way to assist the state with its current financial situation. The furlough plan would have to be approved by the State Personnel Board, and a special State Personnel Board meeting will be called to hear and vote on the furlough plan.

Board Member Muirhead asked who will make the decision on which positions will be posted. Director Najaka stated that the decision will be made by the SPO Director, DFA, and the Governor's office. The decisions will be made based on the critical need for positions.

Chair Romero asked which agencies have representatives on the HR Steering Committee. Director Najaka stated that the members of the committee come from small and large agencies and includes SPO staff.

III. General Public Comment

Bernard Raymond, an employee recently affected by the New Mexico State Treasurer's Office (STO) RIF, addressed the Board. Mr. Raymond thanked the SPO and Andrea Rivera-Smith, Division Director, for assistance in placing him in a position at the New Mexico Department of Public Safety. Mr. Raymond did not lose any PERA time during the transition. Mr. Raymond was concerned that STO may have misrepresented the truth at the December 2016 State Personnel Board meeting.

Representative from STO informed the Board that the vacant positions at STO would not be posted. The positions were posted and Mr. Raymond applied made the referred list and met the minimum qualifications however, he was not called for an interview Mr. Raymond stated that he should have been called for an interview and should have had RIF rights to the positions.

Board Member Manzagol asked if STO will be part of the HR consolidation. Director Najaka said that the Governor does not have authority over agencies with elected officials; however these agencies have been encouraged to participate in the consolidation.



IV. 2017 SPO Annual Open Meetings Resolution

Armida Zamora, SPO Executive Assistant presented, request for approval of the 2017 SPO Annual Open Meetings Act. The request for the 2017 Annual Open Meetings Act is pursuant to the Open Meetings Act NMSA 1978 10-15-1.

Director Najaka stated that the Board is required to adopt an Open Meetings Resolution on an annual basis.

Board Member Muirhead moved to approve the 2017 SPO Annual Open Meetings Act; seconded by Board Member Manzagol. Motion carried.

V. 2017 State Personnel Board Election of Officers for Vice Chair

Board Member Manzagol moved to elect Board Member Muirhead as Vice Chair to the State Personnel Board.

Chair Romero asked if the board could take a short break to discuss the election of Vice Chair. John Grubestic, Assistant Attorney General, suggested that the board have the discussion when the Board adjourns to go into Executive Session.

VI. Classification Study Medical Assistant Classification and Pay Band

Michael McEuen, Compensation and Classification Analyst, presented the request for approval of the Medical Assistant classification study. Mr. McEuen introduced Teresa Padilla, HR Manager at the New Mexico Department of Health.

Mr. McEuen stated that this position is a new clinical position. This position requires medical assistant certification which many technical schools currently provide. The Medical Assistant classification position is a pay band 40 and requires a high school diploma or equivalency and certification as a Medical Assistant in addition to six (6) months of relevant experience.

Ms. Padilla stated that this classification will be an untapped resource and will allow the agency to hire applicants in the public health clinics. These positions will be able to assist with the triage of patients and help address the current nursing shortage the clinics are currently experiencing. This will allow registered nurses in the clinics to attend to higher level duties. Ms. Padilla stated that this classification will help to attract many applicants who are currently seeking nursing degrees and have the experience to perform the duties of the medical assistant.

Board Member Muirhead moved to approve the Classification Study Medical Assistant Classifications and Pay Bands; seconded by Board Member Manzagol. Motion carried.

VII. Classification Study New Mexico Youth Challenge Academy Cadre Classification and Pay Bands



Michael McEuen, Compensation and Classification Analyst presented the request for approval of the classification study for the New Mexico Youth Challenge Academy Cadre Classification and Pay Bands. Mr. McEuen introduced representatives from the Department of Military Affairs (DMA): Kenneth Nava, Deputy Adjutant General; Theresa Martinez, Director of State Programs; Lawrence Montano, Deputy Director of State Programs; and Edwin Quintana, Human Resources Manager.

The New Mexico Youth Challenge Academy Cadre provides cadet supervision and leadership to youth participants in the academy program. Cadre positions will supervise and lead a group of participants in daily and weekly activities. They assure that the Staff Standards in the Cadre Standard Operating Procedures (SOP) are met.

Mr. McEuen stated that this program is aimed to assist high school drop-outs obtain their General Equivalency Degree (GED) and assist the participant in obtaining life skills. The length of the program is 17 ½ months with the first five months consisting of the actual Cadre training. This training is closely related to basic military training in the military. The Cadre will assist participants as they move through the program.

Brigadier General Kenneth Nava addressed the Board and provided more information regarding the Youth Challenge Academy Program. The program is located in Roswell and is a quasi-military structure. Participants cannot have a felony record and must be drug free. Once the participants complete the program, they will have earned their GED, 23 hours of college credits from Eastern New Mexico University, and certification in specific fields. After completion of the program the participants will be able to enlist in the military or the National Guard. The program is 75% federal funded and 25% state funded. The Cadre classification has been misclassified in the past and this new classification will assist in recruiting and retaining candidates. The agency is also working with the New Mexico Public Education Department for their assistance in referring participants for this program.

This position is a pay band 45 and recommended education and experience for full performance is High school or equivalent and two (2) years of military service, corrections work, experience working with at-risk youth, including delivering or evaluating training courses and/or educational activities.

Board Member Muirhead moved to approve the Classification Study New Mexico Youth Challenge Academy Cadre Classification and Pay Bands; seconded by Board Member Manzagol. Motion carried.

VIII. March 2017 Out of Cycle Safety Sensitive Omnibus Position Review

Alicia Lucero, SPO Quality Assurance Auditor, presented the request for the March 2017 Out of Cycle Safety Sensitive and Omnibus Position Review



Ms. Lucero introduced representatives from Energy, Minerals and Natural Resources Department (EMNRD), Toby Velasquez EMNRD Deputy Director and Donald Griego, EMNRD Resource Protection Bureau Chief.

Ms. Lucero requested the review and approval of the out-of-cycle request for additions and removal of Safety Sensitive designated positions for March 2017.

In accordance with **Designation of Safety-Sensitive Positions, Subsection D of 1.7.8.9** New Mexico Administrative Code (NMAC), the State Personnel Board (SPB) shall review and approve out-of-cycle requests for additions and deletions of Safety Sensitive designated positions.

Safety Sensitive positions are recognized as positions in which the impairments of drug or alcohol use would constitute an immediate and direct threat to public health or safety.

These include but are not limited to:

- Peace officers
- Correctional officers
- Employees who are required to regularly carry firearms
- Employees who regularly transport other people as their principle job
- Positions involving use of equipment that could pose a risk to public health or safety.

The Department of Transportation (NMDOT), Energy, Minerals and Natural Resources Department (EMNRD), and Taxation and Revenue Department (TRD) are requesting additions and removals of Safety Sensitive and Omnibus designated positions.

These agencies are requesting the additions and removals for a variety of reasons to include: positions being eliminated and/or reclassified and are no longer performing safety sensitive tasks; positions have been reclassified to now perform safety sensitive tasks; or positions have been re-evaluated and revisions to the designation are now required.

A total of one (1) position will added to the safety sensitive designation. The safety sensitive designation will be removed for a total of five (5) positions. A total of eight (8) positions will no longer require an Omnibus designation and a total of 622 positions will now maintain both a Safety Sensitive/Omnibus designation.

Therefore, upon approval, the State of New Mexico will maintain a revised total of 4,341 Safety Sensitive designated positions, Omnibus designated positions equates to 109 positions and positions designated as both Safety Sensitive and Omnibus totals 1,116 positions. Thus, New Mexico State government maintains a total of 5,566 Safety Sensitive and Omnibus designated positions.

Ms. Lucero requested the State Personnel Board's approval of the March 2017 out-of-cycle additions and removals of Safety Sensitive Designated positions in accordance with Designation of Safety Sensitive Positions, Subsection D of 1.7.8.9 New Mexico Administrative Code (NMAC).

Board Member Manzagol requested an explanation of the difference between Omnibus and Safety Sensitive. Ms. Lucero stated that the Omnibus positions are federally designated

positions and must meet certain federal regulations, and the Safety Sensitive positions are state designated positions and must meet state criteria

Board Member Muirhead moved to approve the March 2017 Out of Cycle Safety Sensitive Omnibus Position Review; seconded by Board Member Manzagol. Motion carried.

IX. 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 Board Member Manzagol. Board Member Muirhead also stated that the discussion concerning the election of officers would also be discussed.

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

The Board met in Executive Session from approximately 9:53 a.m. to 10:01 a.m. For the record, the matters discussed in closed session were limited to those specified below in the Motion to close.

1. *Thorpe v. New Mexico Department of Health*; Docket Nos. 15-044

- **After careful consideration of the proceedings and the Administrative Law Judges' recommendations in *Thorpe v. New Mexico Department of Health 15-044*. The Board moves to adopt the Administrative Law Judges' recommended decision in *Thorpe v. New Mexico Department of Health 15-044*. Board Member Muirhead moved to approve. Motion seconded by Board Member Manzagol. Motion carried.**

Agenda item V. was revisited and Chair Romero asked for nominations for Vice Chair of the New Mexico State Personnel Board.

Board Member Muirhead nominated Board Member Manzagol as Vice Chair of the State Personnel Board. Seconded by Chair Christine Romero.
Motion carried

X. Litigation Update – Jessica Cooper, Administrative Law Judge, Adjudication Bureau

Jessica Cooper, SPO Administrative Law Judge presented the Adjudication update: In February and so far in March, the Adjudication Division received 9 new appeals and disposed of 4 and as of March 29, 2017 there are currently 30 appeals pending. There are also several new developments to report in the district court appeals.



In the Attorney General cases, on February 8, 2017, Judge Attrep issued an Order in the matter of Sanchez-Gagne v. New Mexico Attorney General's Office, a case that the Board addressed, and took action on at its March 6, 2017 Special Board Meeting. Judge Attrep also issued a second Order on February 8, 2017, dismissing the matter of Maldonado v. New Mexico Attorney General's Office for lack of jurisdiction, specifically on the grounds that Mr. Maldonado failed to appeal to District Court within the required 30 days.

Judge Attrep also issued a third Order on February 8, 2017 in the matter of Landau, et al. v. New Mexico Attorney General's Office, certifying all the remaining consolidated AG appeals to the Court of Appeals, on the grounds that the appeals involve "an issue of substantial public importance" – namely, the Attorney General's authority to hire and fire at will, which affects not only the current Appellants, but also all current and future employees the AG's Office.

Ms. Cooper provided copies of Judge Attrep's Orders in both the Maldonado and Landau matters for the Board's review. No Board action is required in either case.

At the March 6, 2017 Special Meeting, the Board authorized Ms. Sanchez-Gagne to pursue her appeal to the Board in accordance with 1.7.12.8(C) NMAC. The Board's decision was reflected in its March 7, 2017 Order. Adjudication had not received a request from Ms. Sanchez-Gagne for a hearing on her jurisdictional dismissal. On March 17, 2017 Ms. Sanchez-Gagne filed a Notice with the District Court, representing that the Board issued a final decision in the matter on March 7, 2017, and requesting that her case now be certified to the Court of Appeals with the other consolidated appellants. Judge Cooper provided copies of Ms. Sanchez-Gagne's Notice to District Court for the Board's review.

In Rojo v. DMA case, Judge Mathew issued a Decision and Order on January 10, 2017, finding that Mr. Rojo's termination was arbitrary and capricious, in the absence of progressive discipline, and remanding the case to the Board for a determination of appropriate disciplinary action. DMA filed a Motion for Rehearing on January 20, asking the District Court to reconsider its Order. The Adjudication Division will continue to monitor the matter, but no Board action is necessary at this time. Copies of DMA's Motion papers were provided to the Board.

In the Board's decision in the case of Trujillo v. DCA has been appealed to district court. At its January meeting, the Board upheld Ms. Trujillo's termination on the basis of her threatening behavior and reference to ethnicity at a meeting, as well as her insubordination. The appeal was filed by Appellant Trujillo and has been assigned to Judge Singleton.

There is no dispositive action to report in the remaining 7 appeals.

XI. Other Business – Next Meeting Date: April 21, 2017

XII. Adjournment

With no further business, **Board Member Manzagol moved to adjourn the State Personnel Board meeting at approximately 11:26 a.m.; seconded by Board Member Muirhead. Motion carried.**

Approved by:



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



Attest: 

Justin Najaka, Director

