



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
December 1, 2017
Minutes

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

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 December 1, 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
Carmen V. Chavez, Board Member
Jerry Manzagol, Vice Chair, absent from the December 1, 2017 State Personnel Board Meeting

Approval of Agenda

Board Member Muirhead moved to approve the December 1, 2017, State Personnel Board Agenda.; seconded by Board Member Chavez. Motion carried.

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Approval of Minutes – October 20, 2017

Board Member Muirhead moved to approve the October 20, 2017 State Personnel Board minutes, seconded by Board Member Chavez. Motion carried.

II. Director's Report

Director Najaka provided the following updates:

1. LFC Hearing

The LFC hearing will be held on Thursday, December 7, 2017 at 3:30 in room 307 at the Round House. The State Personnel Office will present the 2017 Compensation Report along with Higher Education Compensation Report.

2. RIF (Reduction in Force) Employees

There are currently six (6) employees on the Reduction in Force (RIF) list. Andrea Rivera-Smith informed the board because of the pay bands they are limited to the positions they can apply for. They must meet the minimum qualifications of the position they are applying for, they must apply for positions in the same pay band or lower of the position they held at the time they were RIF'd. The employees have six (6) months of Rights of First Refusal on positions that they meet the minimum qualifications. Director Najaka informed the Board that the Department of Public Safety has placed all of their employees that were set to be RIF'd from the October State Personnel Board meeting. Chair Romero wanted to be certain that although the employees RIF rights are no longer in effect that SPO continues to assist the employees in finding employment with the State.

3. HR Consolidation

HR consolidation is moving along. The agencies that are funded by the General Fund and non-restricted agencies will come over first and the agencies that are Federally Funded will come over in FY19. SPO continues to work with the agencies in regards to workflows and processes.

4. Voting Leave

Since the last Board Meeting the Union Representatives have requested an injunction on the award on paid voting leave. The First Judicial District Court has granted the injunction for the employees who are residents of Albuquerque can vote in the Mayoral run-off elections. No upcoming hearing dates available at this time. SPO complied with the First Judicial District Court Order. Vice Chair Romero asked for the reason for the change in municipal elections. Director Najaka stated that it was based on the interpretation of the Voter Leave Act.



5. Staff Update

Staffing change Armida Zamora, Executive Assistant has accepted a position in Human Resources Department at the Children, Youth and Families Department. Mrs. Zamora's last day with SPO will be on Friday, December 15, 2017. Chair Romero and Director Najaka thanked Mrs. Zamora for her work with the State Personnel Office and the State Personnel Board.

6. Neo-Gov Conference Update

Andrea Rivera-Smith, Career Services Division Director gave the Board an update at the 2017 Neo-Gov Conference. Mrs. Rivera-Smith addressed the attendees at the governance on the programs that the State Personnel Office is currently working on in regards to recruitment. SPO is currently working on a project called the Real World Working Challenge which partners agencies with different schools in order to get students interested in possible career in New Mexico State Government. The Santa Fe Indian School (SFIS) partnered with the New Mexico Department of Transportation (NMDOT). The students from the school worked at NMDOT and employees from NMDOT mentors went to the school and presented the jobs that NMDOT may have that the students may be interested. Michael Santillanes in the Career Services Division is responsible for making connections with schools and agencies. He is working with the New Mexico Department of Health in rural areas of New Mexico to partner the agency and schools in those areas. Mr. Santillanes is also working with the New Mexico Department of Workforce Solutions. Chair Romero commented on the wonderful opportunity that State Government offers.

7. Criminal Offender Employment Act

Moses Winston, General Counsel addressed the Board in reference to the Criminal Employment Offender Act. Mr. Winston stated that while working on the HR Consolidation the subject of the act has come up. The act references discipline in regards to employees that have been arrested when they are not at work. 1.7.11.10 rule states that an employee may be suspended, demoted or dismissed for just cause. If an employee is unable to attend to their work duties because of an arrest, it may affect the terms of their employment. If an employee needs to drive a state vehicle and has had their license suspended then it may affect the scope of their position and they would be unable to perform their job. There seems to be inconsistencies in regards to if an employee is arrested or charged with a crime. The Criminal Employment Offender Act does not provide a basis for discipline. Chair Romero asked if an employee is placed on administrative leave for being arrested. Will the agency grant paid or unpaid leave and are all agencies consistent with the same process. General Counsel Winston stated that it is up to the agency. Generally employees are placed on Administrative leave while the employee is being investigated. Chair Romero asked if agencies are consistent when it comes to criminal background checks, and if an employee has to be convicted of a crime in order for them to be disqualified from being hired. General Counsel Winston stated that the Criminal Employment Offender Act will not allow an agency to disqualify a potential employee because he or she has been arrested.



III. General Public Comment

No individuals signed up for General Public Comment.

IV. 2018 Paid Holiday Schedule

Armida Zamora, Executive Assistant to the Director and Deputy Director of the State Personnel Office presented the State of New Mexico 2018 Paid Holiday Schedule. The 2018 Holiday schedule is pursuant to the State Personnel Board rule 1.7.6.9 in regards to legal holidays and follows the Federal Legal Holidays. Motion Required.

Board Member Chavez, moved to approve the 2018 Paid Holiday Schedule; seconded by Board Member Muirhead. Motion carried.

V. 2018 State Personnel Board Meeting Schedule

Armida Zamora, Executive Assistant to the Director and Deputy Director of the State Personnel Office presented the request for the 2018 State personnel Board Meeting Schedule is also in your packets and pursuant to the Personnel Act NMSA 10-9-9 "The Board shall meet at the call of the chairman but in the absence of such call, at least once every two months". And the Open Meetings Act. Motion Required

Board Member Chavez moved to approve the 2018 State Personnel Board Meeting Schedule; seconded by Board Member Muirhead. Motion carried.

VI. Continuation of Alternative Pay Bands

Cliff McNary, SPO Classification and Testing Manager presented the request for the continuation of Alternative Pay Bands. Because of the various Class Studies that the SPO has conducted the number of the Alternative Pay Bands has been reduced from 1/3 to 1/4. The State Personnel Office is recommending the continuation of 313 alternative Pay Bands through 2018. Alternative Pay bands are applied to provide relieve when agencies have retention or recruitment difficulties within a specific classification. When a classification is measure using the Hay Methodology, it is assigned a Pay Band that corresponds to the point total from the measurement. When this Pay Band is insufficient due to market pressures, an Alternative Pay Band is assigned.

In accordance with 1.7.4.10 NMAC the State personnel office recommends the State Personnel Board approved the retention of all existing Alternative Pay Bands.

Board Member Muirhead moved to approve the Continuation of Alternative Pay Bands; seconded by Board Member Chavez. Motion carried.



VII. Market Adjustment for Nursing Classification Series

Cliff McNary, SPO State Classification and Testing Manager presented the request for the Market Adjustment for Nursing the State Personnel Office conducted a salary review of all Nursing positions. Mr. McNary introduced Mr. Bo Beams, Executive Director of the Miners Colfax Medical Center and his leadership team. Miners Colfax Medical Center and the Department of Health will most affected by this Classification Series. SPO determined that an additional market adjustment to the pay bands is necessary to compete with the salaries of New Mexico's surrounding state, local and regional hospitals.

This is the beginning of the Health Care study, SPO will be working on a Health Care Pay structure. In accordance with SPB Rule 1.7.4.11, C The Director, pursuant to the direction of the board, shall adjust the salary schedules to address the external competitiveness of the Service and/or other concerns. Employees whose pay and is adjusted upward or downward shall retain their current salary. Such salary schedule adjustments may result in employees temporarily falling below minimum or above the maximum of their pay band upon implementation. There are eleven employees who fall below minimum and the eleven employees are at the Department of Health New Mexico Behavioral Health Institute.

In accordance with SPB Rule 1.7.4.11, (2): the pay of employees who fall below the minimum of their pay band shall be raised to the minimum unless the Director confirms that the agency does not have budget availability. In these instances, agencies shall raise the pay of employees to the minimum of their pay band within six months of the effective date of the salary schedule adjustment. The market adjustment will be a temporary measure and would assist in recruiting and retaining nurses in the facilities. This market adjustment will include the Certified Nurse Practitioners and the Certified Midwives. There are RN, LPN, and Certified Nurse Practitioners. There are 347 filled positons. Director Beams from Miners Colfax Medical Center introduced his staff from Miners Colfax Medical Center. Mr. Beams spoke of the lack of qualified nurses because of the current pay that the state pays them. Nurses can easily go to private industry and make significantly more money. Director Beams thanked the staff at the SPO for their assistance in working on this market adjustment. Board Member Chavez asked if there has been a significant number of nurses that have vacated state positions.

Board Member Chavez moved to approve the Market Adjustment for Nursing Classification Series; seconded by Board Member Muirhead. Motion carried.

VIII. Annual Compensation Report

Cliff McNary, State Classification and Testing Manager presented the request for approval of the 2017 State of New Mexico Annual Compensation Report. In accordance with State Personnel Board rule 1.7.4.8 NMAC subsection E: Prior to the end of each calendar year, the director shall submit a compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes total compensation to the board. The board shall review adopt and submit this report to the governor and the Legislative Finance Committee. The State Personnel Office recommends approval of the Annual Compensation Report as presented.

Board Member Chavez moved to approve the Annual Compensation Report; seconded by Board Member Muirhead. Motion carried.

IX. Annual Review of Safety Sensitive Positions

Alicia Lucero, SPO Quality Assurance Auditor presented the request for approval of the 2018 Annual Review and Approval of Safety Sensitive/Omnibus Designated Positions.

In accordance with Designation of Safety Sensitive Positions, Subsection C of 1.7.8.9 New Mexico Administrative Code (NMAC), the State Personnel Board must annually review and approve existing Safety Sensitive positions inclusive of any additions and removals of Safety Sensitive designations that have been adjusted by specific agencies for 2018.

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 and positions involving use of equipment that could pose a risk to public health or safety.

Additionally, in accordance with the Omnibus Transportation Employee Testing Act of 1991 and Subsection D of 1.7.8.8 New Mexico Administrative Code, the SPB shall be advised of the federally designated Omnibus positions in use within state agencies. Omnibus positions are recognized per the Federal Omnibus Transportation Employee Testing Act of 1991 and Employees Covered Under DOT Testing Regulation 49 CFR Part 40, which recognizes Omnibus positions that include but are not limited to positions that operate a Commercial Motor Vehicle, Operate and perform service on railroad's, perform aircraft and flight crew functions and perform revenue vehicle operations.

However, it is not required for the SPB to approve these positions as Omnibus as each position is recognized and testing requirements are regulated by federal entities.

A few select agencies request the State Personnel Board's approval for the **removal** of the designation of safety sensitive or omnibus positions due to various reasons such as the positions have been reclassified to different classifications with tasks that no longer require a designation. A total of eight (8) Safety Sensitive and Omnibus positions will be removed.

Additionally, a few select agencies request the State Personnel Board's approval for the addition of the designation of positions that require either an Omnibus or Safety Sensitive designation. A total of sixty-six (66) Safety Sensitive and Omnibus positions will be added.

Therefore, the State Personnel Board approval is requested for all Safety Sensitive positions and review of Omnibus positions, which is as follows: 4,374 Safety Sensitive positions, 120 Omnibus positions and 1,090 both Safety Sensitive and Omnibus positions; for a combined total of 5,584 designated positions for all state agencies for 2018.

I recommend State Personnel Board Approval of the 2018 Safety Sensitive and Omnibus designated positions in accordance with State Personnel Board Rule Designation of Safety-Sensitive Positions, Subsection C of 1.7.8.9 New Mexico Administrative Code. (NMAC) and the Omnibus Transportation Employee Testing Act of 1991 and Subsection D of 1.7.8.8 New Mexico Administrative Code (NMAC).

In addition to the State Personnel Board review and Approval of the Safety Sensitive and Omnibus positions, the State of New Mexico is will continue to provide state agencies with two (2) vendors who can provide Drug and Alcohol Testing services. The vendors are Norton Medical and Phamatech.



The costs and fess to test each employee, is an approximate cost of \$48.00 with Phamatech and \$47.50 with Norton Medical. Other associated costs may occur but vary depending on services rendered.

I now stand for any questions from the board regarding this request at this time.

Board Member Chavez moved to approve the Annual Review of Safety Sensitive Positions; seconded by Board Member Muirhead. Motion carried.

X. 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 Chavez.

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

The Board met in Executive Session from approximately 10:15 a.m. to 10:46 a.m. For the record, the matters discussed in closed session were limited to those specified below in the Motion to close.

1. *Rojo v. New Mexico Department of Military Affairs*; Docket No. 13-057
(tabled from October Board Meeting)
 - **After careful consideration of the Judges' Order and related briefing in *Rojo v. New Mexico Department of Military Affairs*; Docket No. 13-057, Board Member Muirhead moved to table the matter and the Board requests that Director Najaka resubmit the ALJ's original recommendation and related documents to the Board for consideration at the January Board Meeting. Motion seconded by Board Member Chavez. Motion carried.**

2. *Trujillo v. New Mexico Children, Youth and Families Department*; Docket No. 17-004
(tabled from October Board Meeting)
 - **After careful consideration of the proceedings and the Administrative Law Judges' recommendations in *Trujillo v. New Mexico Children, Youth and Families Department*; Docket No. 17-004. Board Member Chavez moved to adopt the Administrative Law Judges' recommended findings of fact. Board Member Chavez moved to adopt the Administrative Law Judges' recommended conclusions of law with the following modification: Items 11-15 from the recommended conclusions of law to be amended to remove "DWI arrest**

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and her” in the wording. Board Member Chavez moved to uphold Ms. Trujillo’s 20 day suspension. Motion seconded by Board Member Murihead. Motion carried.

3. *Ortega v. New Mexico Corrections Department*; Docket No. 16-039

- After careful consideration of the proceedings and the Administrative Law Judges’ recommendations in *Ortega v. New Mexico Corrections Department*; Docket No. 16-039 Board Member Murihead moved to table the Judges’ recommended decision to the January meeting. Motion seconded by Board Member Chavez. Motion carried.

XI. Litigation Update

Jessica Cooper, Administrative Law Judge, presented the Litigation Update. In November, the Adjudication Division received four (4) new appeals and disposed of five (5) appeals. There are currently 30 appeals pending. The State Personnel Board’s (SPB) decision in *Luchetti v. New Mexico Corrections Department* has been appealed to District Court. At the October meeting, the Board reversed Mr. Luchetti’s dismissal and reinstated him, essentially finding that the Corrections Department could not discipline him for multiple AWOLs when it had failed to notify him he was being considered AWOL. The appeal was filed by the Corrections Department and has been assigned to Judge Mathew. There is no dispositive action to report in the eight other Board decisions currently on appeal.

XII. Other Business – Next Meeting Date: January 19, 2018

XIII. Adjournment

With no further business, Board Member Chavez moved to adjourn the State Personnel Board meeting at approximately 10:50 a.m.; seconded by Board Member Muirhead. Motion carried.

Approved by:



Christine B. Romero, Chair
State Personnel Board

Attest:



Justin Najaka, Director

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