



# New Mexico State Personnel Board

## State Personnel Office

Michelle Lujan Grisham  
Governor

Pamela D. Coleman  
Director

State Personnel Board  
Christine B. Romero, Chair  
Jerry Manzagol, Vice Chair  
Carmen V. Chavez, Member

State Personnel Board Meeting  
State Personnel Office  
Gary Carruthers State Library Building  
1209 Camino Carlos Rey, Santa Fe, NM 87507  
June 14, 2019  
Minutes

### I. Procedural Items

#### Call to Order

The meeting of the State Personnel Board (SPB) was called to order by Chair Romero at 10:00 a.m. on June 14, 2019, in the Pinon room of the Garrey Carruthers State Library building, 1209 Camino Carlos Rey, Santa Fe, New Mexico.

Pledge of Allegiance      Cliff McNary

#### Roll Call

Director Pamela D. Coleman called roll and a quorum was established with the following members present:

Christine B. Romero, Chair  
Jerry Manzagol, Vice Chair  
Carmen V. Chavez, Board Member

#### Approval of Agenda

Member Chavez moved to approve the April 19, 2019 State Personnel Board Agenda; seconded by Vice Chair Manzagol. Motion carried unanimously.

#### Approval of Minutes – April 19, 2019

Vice Chair Manzagol moved to approve the April 19, 2019 State Personnel Board minutes, seconded by Member Chavez. Motion carried unanimously.

### II. Department of Health Request for a Rule Exception - NMAC 1.7.4.12 C Administration

Chairwoman Romero calls on Director Coleman to address Department of Health (DOH) request for rule exception. Director Coleman calls on Teresa Padilla, Human Resource Manager, DOH, Desiree Vigil, Workforce Consultant Manager, State Personnel Office, and Eric Chenier, Director, Administrative Services Department, to appear before the Board to share reasons and rationale for their request for exemption to the in pay-band rule. Director Coleman expresses her support of DOH's request for this rule exception.

Desiree Vigil provides a brief synopsis of what led DOH to the current request. The path set by the Human Services Department led agencies to work diligently to attempt appropriate placement and to achieve recruitment and retention efforts within critical positions. DOH, in the past two fiscal years, began working with the nurse classification to achieve appropriate placement and alignment, as this classification demonstrated issues with retention and recruitment.

DOH has since expanded similar efforts to other classifications. In 2018 DOH attempted the first of these efforts with 245 full time employees, which included all nurses. Out of these, 231 needed TRETs (Temporary retention differentials) that assist to correctly capture salaries in order to retain staff.

Desiree proceeds to read a memo from DOH to the State Personnel Board.

Teresa Padilla speaks on behalf of the Department of Health. She highlights that when appropriate placement was implemented last year, out of 245 affected nurse positions, 145 were vacant. Last week vacancies for these positions were down to 95. Appropriate placement has demonstrated positive impact on retention and recruitment, in part due to reduced salary compaction. For example, some nurses who have 30+ years of experience can be placed at maximum of pay band, allowing for placement of new nurses at an appropriate salary.

Teresa adds that DOH received legislative appropriation for fiscal year 2020 to bring to all nurse technicians, home health aides, and psychiatric technicians appropriate placement and in-pay band adjustments. These are to be implemented July 13, 2019.

Teresa adds that DOH's appropriate placement and in-pay-band adjustment efforts have been focused on classifications that have been difficult to recruitment, to fill, and to retain. These focused efforts have benefited the agency and efforts for appropriate placement and in-pay band adjustments for other classifications are anticipated to have similar positive long term effects.

Erick Chenier adds that the current process of adjusting Temporary Recruitment Differentials is administratively burdensome, and expresses appreciation for the potential help the Board can provide by approving DOH's request.

Member Chavez asks for confirmation or clarification of her understanding that the pay increase in question is temporary, but the positions in question are not temporary positions.

Desiree Vigil confirms that her understanding is correct, adding that while in pay-band adjustments are part of base-pay, the current rule sets a limit on in-pay band adjustments to 10%. Thus, a temporary retention differential is used as a temporary pay mechanism in an attempt to achieve appropriate placement. Each succeeding fiscal year the 10% adjustment is rolled-in, and conversions are made until the temporary retention differential amount is close to zero. This process is time consuming and can take as long as four fiscal years to roll-in appropriate increases.

Chair Romero notes that the portions of an employee's salary that is not part of base-pay does not count towards an employee's retirement.

Teresa Padilla adds that if salary is part of an employee's base-pay then it is accounted for in legislative appropriations for increases. Temporary Recruitment Differentials, being separate from base-pay, do not receive the same legislative appropriation for increases. Teresa offers an example of a nurse for whom appropriate placement would require an increase of 70%, which under the current system would take eight fiscal years to implement.

Chair Romero questions when the agency's appropriate placement efforts began. Teresa replies May 2018. Chair Romero questions which positions this request for a rule exception covers- whether it covers only the previously mentioned 245 nurses, and if so are the remaining of 900 previously mentioned positions at the agency expected to be brought to appropriate placement through another request for a rule exception.

Teresa clarifies that the approximately 200 positions that would be affected by the rule exception in question, are for all nurses who are still below appropriate placement, as well as chemists, microbiologists, and health care surveyors. Achieving appropriate placement for the remaining approximately 700 positions does not require a request for a rule exception because increases were legislatively mandated. Teresa adds that DOH will be happy to return to Board with requests for this rule exception, because as efforts for appropriate placement continue other classifications will be prioritized and the agency would similarly benefit from an exception to the rule in question.

Chair Romero questions Director Coleman whether or not she anticipates other agencies coming forward with similar requests for this rule exception, and if the language of this rule is to be reviewed and perhaps revised.

Director Coleman responds that achieving appropriate placement is the appropriate action for an agency with a budget to support the mandate. Given the state's current salary compaction issue, the current influx of money into the state's budget, and the current inability of agencies to stabilize salaries in one fell swoop, an exception to this rule is well within the capacity for agencies to come forward to the Board and request. Director Coleman adds that she and State Personnel General Counsel, Jeff Young, have looked more closely at language that would allow SPO to perform its oversight function of assuring agencies responsibly and most efficiently achieve appropriate placement.

Chair Romero expresses her support of increasing the salary of state employees when funding allows and especially when such increases are to achieve appropriate placement.

Chair Romero asks for any further questions from the Board, and asks Teresa for Clarification of geographic location of the affected employees. Teresa responds that affected positions are scattered throughout the state.

**Vice Chair Manzagol motioned to approve Department of Health Request for a Rule Exception - NMAC 1.7.4.12 C Administration. Member Chavez seconded. Motion carried unanimously.**

### **III. General Public Comment**

No individuals signed up for General Public Comment.

### **IV. Director's Report**

Director Coleman begins with thanks to the State Personnel Board, the State Personnel Office, and the greater SPO family, and for their continued expertise and input.

Director Coleman provides a recap of SPO's role in the legislatively mandated 4% increase, plus one percent for employees making under \$25,000, that is to be implemented in FY 2020. Implementation of these increases requires submission of evaluations from FY 2019. Names of the individuals whose evaluations have not been submitted are being provided to agencies by SPO.

Chair Romero asks for clarification on whether this increase is one for cost of living, or if it includes a performance element. Director Colman clarifies that the 4% increase is not a cost of living increase, but rather a performance increase. She outlines the quantitative requirements which an employee's FY 2019 evaluation must meet in order for that employee to receive the increase.

Director Coleman provides a reminder of the outline of the Path Forward beyond HR Consolidation she provided at April's Board Meeting. She provides the following updates on the Path Forward.

Governor Michelle Lujan Grisham issued an Executive Order on May 20<sup>th</sup> to move forward beyond consolidation. Accordingly, agency human resource staff have begun to return to their agencies and all staff should be back by the following week. Special thanks to SPO CIO Prakash Bhakta, other CIOs, and Administrative Service Division directors for facilitating these moves.

Trainings have been implemented to provide SPO family, and the larger SPO family including HR managers, an overview of the rules and oversight functions of the state personnel office. Six different courses are available including: Rules, Compensation and Classification, Recruitment, Pay, Living in a Union Environment, and Positions. These courses are currently internal pilot courses, which will soon be available to more individuals through the HR Council.

The spirit of collaboration, innovation, cross-pollination of ideas across agencies continues to be the driving force of the path beyond consolidation. SPO can continue to be a center to which agencies must approach for the necessary oversight functions of the office, while moreover being a hub to which agencies want to come for opportunities to collaborate and innovate. Potential examples of this hub might include: on boarding, mentorships programs, Innovation Lab, leadership development, customized recruitment strategies, rapid hire coordination, convenings like the HR Council, professional development, HR training, speaker series, policy briefings, social media coordination.

Director Coleman provided an update of the regular business of state personnel.

Progress rebuilding relationships with labor unions is being made by Sandy Martinez, Labor Division Director, and her team including Marko Satarain and Drew Lovelace. The presidents of both unions expressed their pleasure and gratitude following the second Labor Engagement and Development meeting in which they were invited and included.

Renegotiation of the Collective Bargaining Agreement (CBA) will begin after 10 years. Communications Workers of America has demanded bargaining. Note that the semantics of the word demand shouldn't be taken as aggressive as it is in the rules of the CBA that a union must 'demand' bargaining. In a recently signed settlement agreement, AFSCME indicated that they too will demand bargaining.

The 2019 Tribal Leadership Summit was attended by Director Coleman, SPO Tribal Liaison Eunice Moya, and all Cabinet Secretaries. The summit was a valued opportunity to learn how to rebuild relationships across the state and across the administration.

The internship program is in operation across the administration. With it, the current process to fill internship positions has changed.

Live onboarding has continued and is popular among agencies and individuals who are now receiving messages of welcome and of appreciation for their role in state government.

HR Council continues its revived presence. In the second meeting, auditing tips were compiled and shared with the council exemplifying how SPO can help maximize the learning that is done together.

Excellent progress continues on the Health Care Study, on which Cliff McNary had previously briefed the Board. Subject matter experts, and continued bi-weekly communication with agencies helps ensure uniform understanding of classifications.

Collaboration with agencies continues: with Department of Finance and Administration to improve a CFO module, with Tourism to design a better recruitment page that is based off of NMTRUE, with Taxation and Revenue Department to pilot a leadership development class.

The State Personnel Social Media Committee continues work on a social media challenge that previewed and was well received at a recent Cabinet Meeting. The challenge will help highlight the positive nature of state government, accentuate the work of those in the state, and help with recruitment efforts.

The Association of Counties meeting in Las Vegas was attended by Director Coleman. Every Cabinet Secretary attended at least one meeting to speak about the past legislative session and to answer any questions.

Recruitment efforts continue- especially those to recruit young people. Devont'e Watson attended the Martin Luther King Jr. State Commission Annual Youth Conference to speak about the State Internship program. The event yielded 30 names interested in internships and state employment.

Progress on Willie Ortiz Building continues on schedule for a Sept. 1<sup>st</sup> move in. SPO is coordinating with General Services Department and the Facilities Management Division to move out of the current Albuquerque space to a less expensive space that would allow for a staff of 8-9.

With the Path Forward beyond consolidation, SPO has been reduced from approximately 100 employees in the greater SPO family to about 35 in state personnel. This will be increased to approximately 40.

Review of office processes is underway to allow for more efficient collaboration with agencies and to insure integrity of oversight. This includes the possibility to responsibly delegate the powers pertaining to the director's signature. In past administrations, opportunities were available for senior level state personnel to work directly with agencies to review processes and make decisions on-the-spot rather than waiting for director approval.

Director Coleman stands for questions.

Member Chavez questions where those who are not staying with SPO are going. Director Coleman clarifies that these individuals will return to their agencies. Chair Romero expresses her surprise at there being space for those returning, to which Director Coleman adds that agencies have been keen for the return of HR staff, and have prioritized their accommodation.

Chair Romero expresses her support of collaborative nature of SPO's Path Forward, and questions if there are avenues through which transactions can be expedited. Director Coleman mentions rapid-hire events as an example of facilitating transactions and provides an overview of the success of the of the recent rapid hire events.

Rapid-hire events were held in Carlsbad, Roswell, Farmington, Santa Fe, and Albuquerque. The Las Cruces event was rescheduled as agencies wanted to assure that they could make the most of the opportunity by preparing more staff and positions. Over 1300 individuals attended, and agencies that were well equipped for the events fared particularly well. There were 204 open positions, and employment was offered to 154 individuals.

Of note in these rapid hire events was that for some positions, particularly those in maintenance and landscaping, the requirement of a resume was a barrier of entry for many applicants. The presence of a Department of Workforce Solutions mobile center for aiding in on-the-spot resume creation helped many individuals overcome this initial barrier, exemplifying how transactions may be facilitated. Director Coleman adds that when possible and necessary, review and alteration of the minimum qualifications for particular classifications are being completed in order to eliminate arbitrary barriers of entry.

Chair Romero asks if questions directed at applicants regarding prior conviction of a felony were removed from application processes. Director Coleman clarifies that questions regarding prior convictions are not being directed at candidates in their initial application, but that information regarding prior convictions may still appear and play a role in subsequent processing of an application.

Chair Romero questions whether Director Coleman met with Rebecca Long at the Association of Counties meeting in Las Vegas. Director Coleman answers yes, and adds that past Board members' presence and contribution to the Association of Counties meeting was appreciated.

Chair Romero notes that she has not found information regarding the State Internship Program online and questions if the program is currently in operation. Director Coleman clarifies that the program is in operation, but that information is not yet online. She notes that prospective interns are welcomed to opportunity to come forward and mention their interest in a particular field, and be pre-screened before contact with agencies is made to share their interests.

Chair Romero questions the content of the trainings occurring within SPO, specifically questioning whether one of the trainings being offered is one dealing with on trauma in the workplace. Director Coleman responds that current trainings implemented are not the same as the one Chairwoman Romero alluded to. She adds that the transition back to agencies can be traumatic, and that a training was offered to work through the experience of this transition. The greater SPO family was strongly encouraged to attend.

## V. General Public Comment

No individuals signed up for General Public Comment.

## VI. Executive Session

**Vice Chair Manzagol 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; and to include NMSA 1978, Section 10-15-1(H)(7) for pending litigation; seconded by Board Member Chavez.**

Director Coleman called roll and all members voted in the affirmative.

**Motion carried unanimously.**

The Board met in Executive Session from approximately 10:51 a.m. to 11:00 a.m.

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

**1.) Luchetti v. New Mexico Corrections Department, Docket No. 16-024**

After careful consideration of the Administrative Law Judge's proposed findings of fact, analysis of the relevant law and/or policies in light of the proposed findings of fact of the Recommended Decision and the parties' exceptions to the Recommended Decision, if any, in Luchetti v. New Mexico Corrections Department, Docket No. 16-024, **Vice Chair Manzagol moved to adopt the Administrative Law Judge's Recommended Decision. Motion seconded by Board Member Chavez. Motion carried unanimously.**

**VII. Litigation Update**

Jessica Cooper, Administrative Law Judge for the Board, presented the Adjudication Litigation Update.

In May, and so far in June, Adjudication received 11 new appeals and disposed of 10. There are currently 38 appeals pending.

In addition, there has been dispositive action in the appeal of the Board's decision in Landau et al. v. New Mexico Office of the Attorney General.

As you recall, back in 2015, more than 20 employees of the Attorney General's Office were summarily dismissed and appealed their dismissals to the Board. Pursuant to the Attorney General statute, Section 8-5-5 of the New Mexico statutes, the Board found that employees of the Attorney General's Office serve at the pleasure of the Attorney General and were not part of the classified service. 19 of those employees successfully appealed the Board's decision to district court, and their consolidated case was certified to the Court of Appeals on the grounds that the case involved "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 of the Attorney General's Office. On May 14, 2019, a Court of Appeals panel reversed the Board's decision. The Court of Appeals essentially found that the State Personnel Act controls, rather than the Attorney General's statute, and that the employees of the Attorney General's Office are, therefore, entitled to the rights and protections of classified status. The Court of Appeals remanded the case to the Board for a hearing consistent with that opinion. The Attorney General's Office appealed the decision to the Supreme Court yesterday, and we will continue to monitor the situation closely.

Also there has been yet further dispositive action in Arellano v. New Mexico Department of Health. This matter came before the Board in 2012, and the Board upheld Ms. Arellano's dismissal. Ms. Arellano appealed to district court, and in the seven years that this matter has been



circulating through the court system, the Board's decision has been affirmed multiple times. The last of those affirmances was issued by Judge Raymond Ortiz in May 2018, which I reported to the Board last June. Ms. Arellano appealed Judge Ortiz's decision to the Court of Appeals, and on May 31, 2019, the Court of Appeals again affirmed the district court's finding in favor of the Board.

No new appeals of Board decisions have been filed, and there is no dispositive action to report in the three other existing appeals.

Chair Romero expresses concern given the victory of a previous State Personnel Director, Sandy Perez, to claim the protection of classified service, and protection under the state personnel Board rules. Chair Romero expresses that, given this ruling, she is not surprised that the Board's decision in the case Landau et al. v. New Mexico Office of the Attorney General was overturned.

Chair Romero questions whether the SPO Adjudication Division is fully staffed. Jessica replies that no, there is one vacancy for an Administrative Law Judge. She adds that interviews for that position are currently underway.

**VIII. Other Business – Next Meeting Date: July 19, 2019 at 10:00 am**

Chair Romero asks Director Coleman if an update has been received from the Governor regarding any change in the members of the State Personnel Board. Director Coleman responds that she has no information beyond the current consideration of one member to join the Board.

**IX. Adjournment**

With no further business. **Vice Chair Manzagol moved to adjourn the State Personnel Board meeting at approximately 11:08 a.m.; seconded by Board Member Chavez. Motion carried unanimously.**

Approved by:



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

Attest:



**Pamela D. Coleman, Director**