



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
March 22, 2019
Minutes

I. Procedural Items

The meeting of the State Personnel Board was postponed until 10:00 a.m. due to Board Member Chavez running late. Chair Romero called for a short recess. No objections were made.

Call to Order

The meeting of the State Personnel Board (SPB) was called to order by Chair Romero at approximately 10:17 a.m. on March 22, 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

Moment of Silence- Director Pamela D. Coleman called for a brief moment of silence.

Roll Call

Director 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

Board Member Chavez moved to approve the March 22, 2019 State Personnel Board Agenda; seconded by Vice Chair Manzagol. Motion carried unanimously.

Approval of Minutes – January 18, 2019

Board Member Chavez moved to approve the January 18, 2019 State Personnel Board minutes, seconded by Vice Chair Manzagol. Motion carried unanimously.

II. NM Human Services Department Request for Exemption to SPO 1.7.7.8 (G)

Dustin Acklin, Acting HR Manager presented the request for approval of the exemption to SPO Rule 1.7.7.8-Annual Leave. Present with Mr. Acklin was Desirae Vigil, SPO Team Lead in Workforce Planning and Angela Medrano, Deputy Director. The Human Service Department (HSD) is requesting the exemption due to an administrative miscalculation in accrued annual leave. An HSD employee was promoted within HSD in September 2015, when the promotion was entered into SHARE, the employee's Benefits Service Date was changed to appear that he was a new hire and not a current employee due to administrative oversight. The employee therefore was accruing at a lower rate in annual leave. The employee kept a high annual leave balance, so when the change in accrual occurred it was not immediately discovered by the employee. In August 2018 the employee discovered the error. HSD payroll department immediately corrected the error in SHARE and calculated the total hours owed to the employee. The total hours owed to the employee was 230.25 hours. 42.98 hours of the 230.25 annual leave hours were awarded to the employee. Leaving a balance of 187.27 hours owed to the employee. HSD would like to pay the remaining owed hours to the employee.

Chair Romero stated that she thought that the employee identified 200 hours owed and that the employee already took the 200 hours. Chair Romero asked if the 187 hours is in addition to the 200-hour error? Mr. Acklin stated no, he clarified that only 42.98 hours have been awarded to the employee out of the 230.25 hours owed. Since the employee has a high annual balance, awarding the 187 hours would result for the employee to be off for several months.

Chair Romero asked if the Board approves this request, the 187 hours would be paid out to him. Mr. Acklin indicated yes, the employee would be paid for that amount of hours. Board Member Chavez indicated normally employees would not be paid out, correct? If the employee doesn't use the annual leave, they would lose the hours. Mr. Acklin stated that was correct. Chair Romero indicated that the max allowed annual leave is 240 hours for State Employees. So by paying the employee, it would make the employee whole. Chair Romero indicated this miscalculation was a key entry error of HSD staff and it is important to make employees whole when we do something incorrect. Mr. Acklin informed the Board that HSD has re-trained their staff so this type of error does not happen again. In addition, an email was sent out to all HSD staff last year to review their accrual to make sure there was no other errors to correct. HSD audited over 30 employees' hours, and made the necessary corrections to those employees.

Vice Chair Manzagol moved to approve the Request to Exemption to SPO Rule 1.7.7.8; seconded by Board Member Chavez. Motion carried unanimously.

III. NM Human Services Department Request for Exemption to SPO Rule 1.7.4.12 (C)

Desirae Vigil, SPO Team Lead in Workforce Planning, presented the request an exception to Subsection C. of 1.7.4.12 NMAC, Administrative Salary Schedule, Salary upon In Pay Band Adjustment. In 2018, during the previous administration, the Human Services Department (HSD) Cabinet Secretary and the State Personnel Office (SPO) Director agreed to increase employee

salaries within HSD's Income Support Division and Child Support Enforcement Division whose comp-ratios fell below 90%. The increase in salaries will assist in retention efforts and internal pay alignment. On October 24, 2018, the SPO Director approved various In Pay Band (IPB) increases. As a result, 887 employees received various percentages of IPB increases to reach the range of 88.24% to 90% comp-ratios. However, on December 4, 2018, SPO discovered that out of the 887 IPB increases, 508 IPB were over the allowed amount of 10% pursuant to subsection C. of 1.7.4.12 NMAC, which states...agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned pay band.... It has been determined that when executive management met to discuss the IPB increases, the goal was to reach a specific comp-ratio, not realizing the IPB increases were over the allowed amount of 10%. HSD and SPO both agree that correcting the error and granting the employees a 10% IPB and the additional increase through a Temporary Retention Differential-Multiple Component of Pay is administratively inefficient and adversely affects each employee as monies would need to be recouped and PERA contributions adjusted and reimbursed. The schedule of those 508 employees is attached hereto and made a part hereof. *(The schedule of the 508 employees mentioned was inadvertently left out of the packet to the Board.)* Therefore, on behalf of HSD and SPO, I respectfully request your approval to make an exception to subsection C. of 1.7.4.12 NMAC – Administrative Salary Schedule, Salary upon In Pay Band Adjustment and that the amounts recorded over 10% for these specific employees, remain in place. Ms. Vigil explained previous administration, HSD and HR came to a conclusion on helping HSD reach specific comp-ratio to help retention issues, because of a lot of turn over. So in the that process there are roughly 900 actions that came through that were missed seeing that some were over 10% IPB by roughly by 1%, 2%, 3% therefore SPO did not follow the rule as an oversight, not intentional in any means. Chair Romero stated that she was surprised to hear that SPO did not catch it, because they are experts on the comp-ratio. She indicated that this was not the employees fault. Ms. Vigil said it is not the employees fault, and this the reason that SPO does not want to remove the total amount in the IBP, that way to not adversely affect the employees.

Chair Romero indicated that the TSI's are not good because we want the employees pay to go toward their retirement, TSI's are not in the employees best interest. Chair Romero wanted to make sure that this would not affect employees in any negative way. HSD confirmed that it would not. Chair Romero thanked the HSD representatives for attending the meeting and indicated that it is very important for the agencies' representatives to be present for the meeting because it implies to the Board that they care about the action-taking place for the department.

Board Member Chavez moved to approve the Request to Exemption to SPO Rule 1.7.4.12; seconded by Vice Chair Manzagol. Motion carried unanimously.

IV. State Government Internship Classification

Cliff McNary, State Classification and Testing Manager of the State Personnel Office presented the request to approve the State Government Internship Classification. The State Personnel Office recommends that the State Personnel Board approve the proposed State Government Intern classification descriptions. State Personnel Office has renewed its commitment to the Statewide Internship Program by introducing an intern classification series that is more inclusive than the current one level State Government Intern by distinguishing different levels of education and experiential opportunities for New Mexico's students. This classification series will introduce a wider range of interns to the career opportunities that State Government has to offer. The implementation of the classification study, in line with State Personnel Board Rules, does not have a fiscal impact. However, individual agency utilization of the classification after implementation may have a fiscal impact. The new job description was measured by the Job Evaluation Committee on March 15, 2019. The following would be assigned: High School Intern, Pay Band 30; APB of 35; College Undergraduate Intern; Pay Band 55 ; Graduate Intern; Pay band 60

In reference to the high school Intern, an Alternative Pay Band (APB) is included for a market adjustment. It is being recommended primarily because there has been a lot of legislative chasing a living wage and a minimum wage should be. The SPO wanted to stay ahead of the game. The City of Santa Fe minimum wage is \$11.80 as of March 1, 2019. Pay band 35 has a mid-point pay of \$11.85.

Attorney General Stephen Vigil asked if the minim wage bill that was passed by the legislature will affect all of the pay bands? Mr. McNary indicated the pay bands that are being requested today have already been taken to account of that minimum wage. The prime focus is to compete with the City of Santa Fe.

Director Coleman stated the opportunity to create Intern classifications in the three levels and to allow students of all levels to create a pipeline so we can convert them into the future was the intention of this. Director Coleman recognized Andrea Rivera-Smith from the Talent Acquisition and her team who worked on this to find the best programs around the County. Director Coleman stated she is very proud of this classification and appreciates the Board's consideration.

Chair Romero asked what State agencies would have this available to them. Mr. McNary stated most State agencies initially will engage. There will be a learning curve with this program because we wanted to make a distinction like STEM type of experience vs. non-STEM or Administrative or Management. It is a little too early to pigeonhole students into a specific occupational direction. We will learn with the agencies whom we partner up with to expand and modify as need be.

Chair Romero expressed how she was very impressed with this classification. Vice Chair Manzagol likes that the classification is broken down into three groups. He asked what type of jobs would be offered to the high school students would be offered in State government. Mr. McNary said that they tried to match up know-how of the level of the job, not just pay-band. Essentially this would be someone right out of high school with no experience, does not really know what they want to do. Literally, the sky is the limit. They can be hired in doing anything but

I think within reason with the proper mentoring, they would have to start off with something administrative support, just because of the level of know-how. Chair Romero said it very important to help students and to mentor them--to show them what is appropriate for the work environment. Director Coleman said that the program that we are envisioning will have a strong mentoring component. Without a strong mentor, it shouldn't be that any intern, in any level is relegated to do one task of copying or filing within itself without having exposure to the full realm to what that office does. This will be an application process that young people will have to apply into.

Vice Chair Manzagol moved to approve the State Government Internship Classification; seconded by Board Member Chavez. Motion carried unanimously.

V. Department of Game and Fish Removal of Safety Sensitive Positions

Cynthia Anaya, Quality Assurance & Data Analytics Specialist for the State Personnel Office presented the Department of Game and Fish removal of safety sensitive positions. Present with Ms. Anaya was HR Administrator JoeRay Anaya. In accordance to State Personnel Board (SPB) Rule 1.7.8.9 NMAC, Designation of Safety-Sensitive Positions, the Department of Game and Fish (DGF) is requesting SPB's approval for the removal of 32 Safety Sensitive Positions. Safety Sensitive positions are identified as positions in which the impairments of drug or alcohol use would constitute an immediate and direct threat to public health or safety. Currently the Department has 126 designated safety sensitive positions. The Department conducted an evaluation and based on the evaluation of tasks completed in February 2019, DGF determined that the duties of 32 positions have changed and the positions are no longer required to carry a firearm. These changes are required based on the operational need of the agency and the specific job duties designated to each of the positions. These positions include: 10 management, 5 administrators, 3 coordinators, 14 zoologist wildlife biologist. The removal of the 32 positions, will leave a total of 94 designated safety sensitive positions. Based upon review and analysis of the out of cycle review, I recommend SPB approval of the out-of-cycle deletion of Safety Sensitive Designated positions in accordance with Designation of Safety Sensitive Positions, subsection D. of 1. 7.8.9 NMAC.

Vice Chair Manzagol referred to the list that was provided to the Board regarding the Safety positions. He asked if the Fish & Game Wardens were still designated as safety positions. JoeRay Anaya, HR Administrator stated yes, anyone that is as a commission officer will stay as a safety sensitive designation. The evaluation of these positions, determined that roughly seven years ago, the Department went under a major re-organization and part of the re-organization was an oversight where commission officers were placed in non-commission roles but the safety sensitive component was never changed. For this reason, this is the majority of these actions.

Board Member Chavez moved to approve the Department of Game and Fish Removal of Safety Sensitive Positions; seconded by Vice Chair Manzagol. Motion carried unanimously.

VI. General Public Comment

Mr. Brian Payne made a public comment relating to Talent Acquisition hiring process. Mr. Payne stated that he recently spoke to Director Coleman about his concerns. Director Coleman has addressed some of his concerns and guided him regarding the hiring process. He indicated that he would like to see more of a diversified workforce within State Government especially in Santa Fe. A more diverse workforce in the city of Santa Fe is extremely important for the needs of Santa Fe. He personally would like to be part of the workforce.

Chair Romero asked Mr. Payne if he has worked in State Government before. Mr. Payne indicated that he had worked in State Government in the State of Texas. He has worked in Santa Fe for a private entity.

Chair Romero thanked Mr. Payne for his comment and encouraged individuals to sign up for public comment in the future, as it helps the Board and the State Personnel Office make the most informed decisions.

VII. Director's Report

Director Coleman provided the following update:

Director Coleman thanked the Board for their support and their continued service to the State of New Mexico. She expressed how grateful she is for the staff and that the staff have been fantastic during the transition and during the session. Director Coleman commended the State Personnel Office staff and all the HR staff across the administration. She has had a wonderful experience for the 10-11 weeks that she has been the Director. Director Coleman has made many visits to numerous Agencies, Boards, and Commissions to meet with them in person and to find out any questions they may have about State Personnel. She has had great reception from everyone and thanked the HR professionals in the room.

Legislative Session ---Director Coleman sent the Board and the staff an email with updates with a few items that SPO had been tracking and now they are either on the Governor's desk or ready to get to the Governor's desk. Director Coleman thanked Stuart Hamilton, CFO at the State Personnel Office and thanked the Classification and Compensation Team, led by Cliff McNary, for providing information on a moments notice when those were called into action. SB437 regarding minimum wage was currently written as an average of 4% increase for State employees, we have made the recommendation that it is a 4% increase and not an average. It is currently enrolled & engrossed, which means that is ready to be considered by the Governor. HB501 regarding an increase of .5% by the employer to PERA/ERB, which is also enrolled & engrossed. The State Personnel is waiting on the Operating Budget, which currently has a line item in the budget for the staffing analysis for 300,000 in result of the special appropriation and also 100,000 devoted to the internship program as a result of Senator Linda Lopez sponsoring a bill for the money.

During the session, the State Personnel Office took the opportunity to hold two recruitment sessions at the Roundhouse with Andrea Rivera-Smith and her team in Talent Acquisition. It was a great opportunity for people to see that State Government is hiring.

Willie Ortiz Building Update --The Willie Ortiz Building remediation has been complete as far as asepsis removal. They are currently doing a built out internally. We were scheduled to go back on July 1, 2019 however, it was discovered in the building once they took down the drywall that it was not up to standard. The date is now September 1, 2019. Director Coleman is pleased to work with FMD and GSD on the project.

Management/Labor Meetings--Sandy Martinez in the Labor Division had the opportunity to meet with representatives of labor, with a number of members of management. To do a reset of that relationship. A meeting was held with CWA representatives to clear a number of actions to settle, to reset those relationships. Also speaking with AFSCME to have a reset meeting with them. We feel very encouraged in the new administration, we will be able to be on the table to re-negotiate both of the CBA's some point this year, to at least get them started. Chair Romero indicated that is great and is a huge deal, especially since we have not had a signed contract in ten years.

Training --The Training Team led by Karen Spehar- Brought all the trainers across the administration for a training Unite Meeting. As a convener to bring more people back together to talk about trainings from civil rights training to professional development. Another Unite meeting will be held to talk about on-boarding.

HR Council Re-Convening-- will be held next Friday, March 29. Every HR professional has been invited to reconstitute a council that was disbanded a number of years ago. With the collective wisdom around the administration, it is impressive and when we bring people in a room together we can solve problems very quickly and can get the information back out to the agencies.

Statewide Rapid Hire --With Department of Workforce Solutions, a Statewide Rapid Hire Tour will take place in Carlsbad, Roswell, Farmington, Las Cruces, Santa Fe and Albuquerque with DOT, DOH, HSD, DMA, DPS, and CYFD. All will have representatives present for the rapid hire tour to hire individuals. This will encourage local people to apply in those areas.

Health Care Study--Cliff McNary's group- Amparo Juarez, Max Cordova, Carolyn Spidle, are very close to getting on the other side of the Health Care Study, which is a huge undertaking. This is a re-classification for the health care field. We will also get the additional positions covered specify by the health care study but the health care related positions that will be part of the health care study in phase II. SPO and employees in the health care field are very excited about it.

Intern Classifications --Director Coleman thanked the Board for approving the classification.

Inclement Weather Policy-The inclement weather policy was updated recently. It was implemented a number of weeks ago, just before the two snow days that recently occurred. We will see how the policy works out in the future.

General Counsel -Jeff Young has been named the State Personnel Office General Counsel. He was the State Personnel Office's Legal Supervisor for the last year and half.

Director Coleman thanked everyone at State Personnel and thanked Leane Madrid for all her help and support.

Chair Romero asked how long has the HR council been disbanded because she has heard that the smaller agencies are not included or invited. Director Coleman indicated that the email inviting all the HR Council was sent out to everyone and asked staff to send out if anyone was left out. Chair Romero asked when Rapid Hire started. Andrea Rivera-Smith stated that it was started in 2015. It is a wonderful opportunity for agencies to supplement traditional recruiting. Director Coleman encouraged Mr. Payne to attend the Rapid Hire events. Chair Romero asked the number of vacant positions in State Government. Andrea Rivera-Smith indicated that currently agencies are trying to fill 1,000 active positions. The rapid hire will be a great opportunity for us to get some of those positions filled. Director Coleman stated that the HR professionals who are from the agencies and are here today, they are doing fantastic work at their agencies to get the postings up and conducting interviews, we are signing actions every day. Chair Romero encouraged all the state agencies to attend the Board meetings to find out the latest information, including the Rapid Hire event.

Chair Romeo asked about the Health Care Study, Director Coleman asked Mr. McNary to provide some information.

Mr. McNary provided a brief update on the ongoing Health Care Study. The study was supposed to start in December of last year, but was on hold for about 60 days due to the consolation and moving building locations. We have brought back Max Cordova to the State Personnel Office who is our data analytics guru. Right now we are in the allocation phase-agencies are now reviewing how we moved people to their current titles to the proposed titles, we are currently getting the feedback from the agencies. Next month we will be working with SME's to develop the classification descriptors, which will be a lot of work. In May, we will be doing a lot of the cleanup work with the cost analyst. Director Coleman will need to be very involve with that, a lot of dialogue will need to be done with the agencies. Since this is the largest study ever done, money will be involved. Five new salary structures will be introduced just for health care. Chair Romero asked if we have done pieces of the health care classifications. Mr. McNary said it has only been done as a band-aid with alternative pay bands. Chair Romero thanked Mr. McNary for the update and the Board is looking forward to see the study. Mr. McNary said the target date for the Board to review the Health Care Study is June 14, 2019.

VIII. 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; 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 11:05 a.m. to 11:11 a.m.

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

1.) Vigil v. New Mexico Department of Health; Docket No. 15-079

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 to the Recommended Decision, if any, in Vigil v. New Mexico Department of Health; Docket No. 15-079, **Board Member Chavez moved to adopt the Administrative Law Judge's Recommended Decision. Motion seconded by Vice Chair Manzagol. Motion carried unanimously.**

IX. Other Litigation Update

Attorney Michael Heitz, presented the litigation update. Mr. Heitz was retained by Risk Management to assist in Aging and Long-Term Services Department (ALTSD), for the Reduction in Force (RIF), that was approved by the Board in the November 30, 2018 meeting. Subsequent to the approval, some of the affected employees filed two actions in District Court. One of the actions was a Complaint for Declaratory Judgment and Injunctive Relief and the second was an Appeal of the Board's approval of the RIF. With the change of administration, Secretary McCoy took over for ALTSD. After discussions in meetings with Secretary McCoy, the Department decided to go in a different direction. Through discussion with Mr. Montalbano, counsel for the affected employees, a letter was drafted and signed by Secretary McCoy. Mr. Montalbano responded saying the letter addressed the concerns of his clients. Essentially, subsequent to the Board's approval, the remaining affected employees were provided additional time to sign an agreement to voluntarily transfer their positions, which they did so. That took them outside of being affected, their positions were no longer affected by the RIF. It was memorialized in the letter sent by Secretary McCoy. It then became a matter once ALTSD decided to keep those positions in Albuquerque. It was simply doing everything in reverse for those affected employees. The employees signed to go back to Albuquerque. Once the letter was exchanged with Mr. Montalbano, he approved the dismissal documents for the two district court actions. One of the actions, Docket No. D-0101-CV-2018-03532, was dismissed on February 14, 2019, signed by Judge Wilson. The other action, Docket No. D-0101-CV-2018-03644 was dismissed in March 2019, signed by Judge Ortiz. Both cases have been dismissed and disposed of relating to the RIF. If in the future, ALTSD decided in fact wanted to move positions or a RIF, they would present a new plan to the Board.

Chair Romero stated that the Board would expect a new proposal. She thanked Mr. Heitz for providing the update and the Board is happy to hear that these matters have been resolved.

X. Adjudication Litigation Update

Jessica Cooper, Administrative Law Judge for the Board, presented the Adjudication Litigation Update. In the In February and so far in March, Adjudication received 10 new appeals and disposed of 2. There are currently 39 appeals pending.

There has been dispositive action in three appeals of Board decisions:

Mares v. DFA. If you recall, in June 2018, the Board reversed DFA's dismissal of Ms. Mares, finding that she had resigned prior to being dismissed. DFA initially appealed the Board's decision to district court, but in February, the parties jointly stipulated that the appeal should be dismissed. According to Judge Francis Mathew's February 15 Stipulated Order of Dismissal of Appeal, "upon a change of administration and review of the record," DFA decided to effectuate the remedy issued by the Board in its Final Decision, namely (1) placing the Board's Final Decision and the ALJ's Recommended Decision in Ms. Mares' personnel file and her State Personnel Office file, and (2) coding and designating in SHARE that Ms. Mares was not dismissed but resigned. So *Mares v. DFA* has been resolved.

In the Board's June 2017 decision in *Martinez v. CYFD* was affirmed by Judge Mathew. In that case, the Board upheld Ms. Martinez' dismissal on the grounds that she was required to drive with an ignition interlock device and therefore could not perform an essential function of her job. In a brief decision issued on January 15, Judge Mathew found that the Board's decision was supported by substantial evidence.

The Board's decision in *Ortega v. NMCD* was affirmed by Judge Raymond Ortiz. In *Ortega*, 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. Interestingly, in his February 5, 2019 Order, Judge Ortiz found that the New Mexico Corrections Department is a law enforcement agency and, therefore, the *Criminal Offender Employment Act* did not apply under the circumstances.

Copies of the relevant district court orders and decisions were provided to the Board.


No new appeals of Board decisions have been filed, and there is no dispositive action to report in the five other Board decisions currently on appeal.


Chair Romero thanked Judge Cooper and asked who was part of the Adjudication Division staff. Judge Cooper indicated that it is Richard Blumenfeld, Annette Lopez and herself that are in the Division.

XI. Other Business – Next Meeting Date: Friday, April 19, 2019

XII. Adjournment

With no further business, Vice Chair Manzagol moved to adjourn the State Personnel Board meeting at approximately 11:20 a.m.; seconded by Board Member Chavez. Motion carried unanimously.

Approved by:

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

Attest:

Pamela D. Coleman, Director