New Mexico State Personnel Board

State Personnel Office

SUSANA MARTINEZ
GOVERNOR

Justin Najaka
Director

Nivia L. Thames
Deputy Director

State Personnel Board
Christine B. Romero, Chair

Megan Muirhead Jerry Manzagol

State Personnel Board Meeting
State Personnel Office
2600 Cerrillos Road
Santa Fe, NM 87505
December 8, 2016
Minutes

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 8, 2016 at the State Personnel Office (SPO), Santa Fe, New Mexico.

Invocation Stuart Hamilton

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 December 8, 2016 Agenda with the following changes to be made: Item VI. Reduction in Force - NM Office of the State Treasurer and item VIII. Reduction in Force NM Governor's Commission on Disability will be switched; seconded by Board Member Manzagol. Motion carried.

Approval of Minutes – October 20, 2016

Board Member Manzagol moved to approve the October 20, 2016 State Personnel Board meeting minutes; seconded by Board Member Muirhead. Motion carried.

II. Director's Report

Director Najaka provided the following updates:

1. SPO FY 16 Audit

Director Najaka stated that the FY16 State Personnel audit was conducted with no errors found.

2. 2016 Classified Service Compensation Update

Director Najaka will present the 2016 Classified Service Compensation Report to the Legislative Finance Committee on December 8, 2016 at 3:30.

3. Department of Labor (DOL) 2016 changes to the Fair Labor Standards Act (FLSA)

On May 23, 2016 the US DOL published a new FLSA rule purporting to increase the salary threshold for FLSA "exempt" status to include those employees commonly referred to as "white collar" or "EAP" exempt which was schedule to take effect on December 1, 2016. The new rule was challenged on various legal grounds and on November 22, 2016 the U.S. District Court for the Eastern District of Texas issued a temporary injunction of the DOL's final rule. In light of the injunction the State of New Mexico will not implement the new DOL rule. Director Najaka thanked the human resources employees at the agencies who assisted in getting all the information entered into the system in the event that the FLSA salary threshold changes were implemented.

4. SPO Digitization and Modernization Project

Digitization project is progressing, a vendor has been selected and meetings have been scheduled to proceed with the implementation project. Personnel records for all active employees within the classified service will be digitize.

5. Staff Update

Bernadette Torr and Isis Chirinos have received promotions and are now in the Career Services Division.

New employees:
Kathleen Mulchay has been hired as a Records Clerk in the Administrative Support Division
Justine Andrews has been hired as a SPO Consultant in the Shared Services Division. Ms. Andrews comes to SPO from the Workers Compensation Administration.
Michael Santillanes has been hired as a Program Manager with the Career Services Division. Mr. Santillanes comes to SPO from the private sector.

Moses Winston will be the new General Counsel and will start with SPO on January 3, 2017. Mr. Winston comes to SPO from the private sector and was also employed as General Counsel at several state agencies.

6. State Budget

The Legislative Session will begin in January and the item at the top of the agenda will be the budget. All agencies have been directed to cut their budgets by 5.5%.

III. General Public Comment

Bernard Raymond employee from the New Mexico State Treasurers Office (STO) addressed the Board concerning the STO's request for a Reduction in Force (RIF). Mr. Raymond is an employee whose position will be affected by the RIF.
Mr. Raymond has been a state employee for 23 ½ years and the last 5 ½ years Mr. Raymond was employed at STO. Mr. Raymond stated that he feels that the STO RIF is a retaliatory move against him by Treasurer Tim Eichenberg and some members of the STO staff. Mr. Raymond informed the Board that the STO reverted $199,600. Which was not required since STO does not fall under Senate Bill 8. Mr. Raymond requested to be cross trained in the Cash Management Division and his request was denied. Mr. Raymond stated that he is very well qualified for positions within the Cash Management Division at STO Mr. Raymond stated he is well trained in this area. Mr. Raymond left additional information for the board and thanked them for the opportunity to speak.

Mr. Donald Alire, President Communications Workers of American (CWA) Local #0706 addressed the Board and asked the Board to consider not approving the request for the State Treasurers Office RIF.

IV. 2017 Paid Holiday Schedule

Armida Zamora, SPO Executive Assistant presented the 2017 Paid Holiday Schedule. The request for the 2017 Paid Holiday Schedule is pursuant to State Personnel Board rule 1.7.6.9 in regards to legal holidays.

Board Member Manzagol moved to approve the 2017 Paid Holiday Schedule; seconded by Board Member Muirhead. Motion carried.

V. 2017 State Personnel Board Meeting Schedule

Armida Zamora, SPO Executive Assistant presented the 2017 State Personnel Board Meeting Schedule. The 2017 State Personnel Board Meeting Schedule is 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. Chair Romero clarified that the dates of the State Personnel Board Meeting will be on Fridays rather than Tuesdays.

Board Member Manzagol moved to approve the 2017 Paid Holiday Schedule; seconded by Board Member Muirhead. Motion carried.

VI. Reduction in Force (RIF) – NM Governor's Commission on Disability (GCD)

April Naranjo, SPO Staff Manager Shared Services Division presented the request for the GCD RIF. Ms. Naranjo introduced Governor's Commission on Disability Director Karen Courtney Peterson and Deputy Director Anthony Alarid.

The request for GCD RIF falls under the SPB Rule 1.7.10.9 NMAC and is to be effective January 14, 2017. The RIF is being requested due to the critical need for a full time, 40 hour Social and Community Service Coordinator-Advanced position within the Information/Advocacy Services Department. This will result in the elimination of one job share filled term classified position. The positions was originally created has a job share; however the agency has conducted an analysis and has determined that there is a need for a full time Social and Community Service Coordinator-Advanced position. The Executive Secretary and Administrative Assistant- Operational position has two incumbents sharing the position at 20 hours per employee. Recently one of the employees submitted her resignation effective November 30, 2016. For this reason the decision was made to eliminate the Executive Secretary and Administrative Assistant Operational positon. Ms. Yvonne Abeyta Executive Secretary and Administrative Assistant Operational will be affected by the RIF and the RIF is effective January 14, 2017. The state personnel office will work with all state agencies to place all potential RIF candidates prior to the effective date of the RIF.

Board Member Muirhead asked who will be assigned the current duties of the Executive Secretary and Administrative Assistant Operational position. Director Courtney-Peterson stated that the Executive Assistant in the Santa Fe office will pick up the administrative duties and the reminder of the duties will be split within the agency.

Board Member Manzagol moved to approve the Governor's Commission on Disability Reduction in Force; seconded by Board Member Muirhead. Motion carried.

VII. Reduction in Force (RIF) – New Mexico Department of Public Safety (NMDPS)

Marisa Santisteven, Agency HR Services Human Resource Consultant presented the request for approval of New Mexico Department of Public Safety RIF. Ms. Santistevan introduced staff from the NMDPS: Chief Pete Kassatas, Communications Director Terry Thornberry, Deputy Communications Director Glendora Orphey, Human Resource Director Vicky Bowser and Human Resource Deputy Director Reyna Lovato. Pursuant to SPB 1.7.10.9 NMAC, the NMDPS is requesting the RIF be effective February 4, 2017 for the Alamogordo location and April 8, 2017 for the Roswell location.

The Department will close the Alamogordo and Roswell District Communications Centers and will move dispatching services from these centers to the Las Cruces Center. The Alamogordo location has six permanent status employees which includes five dispatchers and one dispatch supervisor. The Roswell location has four (4) permanent dispatchers, and one probationary dispatcher. The plan is being requested

due to an ongoing consolidation of Communication Centers and will result in the elimination of nine (9) filled permanent classified positions. NMDPS has reviewed the agencies program and vacancies to include the Southern Communications Centers and has concluded that the streamlining of services is critical to the statutory function of DPS and is eliminating older communications centers in their entirety. The SPO Career Services Division will assist the employees to find a suitable position within state government. Chief Kassates stated that three centers which included Santa Fe, Espanola and Raton centers have been consolidated. The decision to consolidate the centers is not budget driven however, to insure that all dispatch areas within the state are adequately covered. This will also enable the agency to update the communication centers with the latest technology in order to better serve the people of New Mexico.
There are three communications centers within the state they are Albuquerque, Las Cruces and Las Vegas
The Board wanted to assure that everything is done in order to place the RIF'd employees in other state positions and would like an update at the next State Personnel Board Meeting

Board Member Muirhead moved to approve the Department of Public Safety Reduction in Force; seconded by Board Member Manzagol. Motion carried.

VIII. Reduction in Force (RIF) – New Mexico State Treasurer's Office (STO)

David Berry, Agency HR Services Human Resource Consultant presented the request for the RIF for the New Mexico State Treasurers Office. Mr. Berry introduced State Treasurer Tim Eichenberg, Deputy Treasurer Sam Collins, Chief Information Officer Leo Marquez, Chief General Counsel Cindy Cordova and HR Manager Kiki Arrellano.
The STO is requesting the approval of a RIF pursuant to SPB 1.7.10.9 NMAC. The RIF plan is being requested due to budgetary constraints and will result in the elimination of one (1) filled permanent classified position. STO has reviewed the agencies programs and vacancies to include the Financial Literacy Program (FLP) and has concluded that the FLP is not critical to the statutory function of STO and the program will be eliminated. One employee will be affected by the RIF. In addition to the elimination of the program, STO will delete four vacant classified positions within the FLP.

Board Member Manzagol asked if the agency or Mr. Berry had reviewed the information that the board received from CWA. Mr. Berry stated that he had. Board Member Manzagol is concerned that the employee affected by the RIF has only 18 months to retire and asked if the employee affected by the RIF could be place within the State Treasurers Office. Treasurer Eichenberg responded that there is not a position within the agency where this employee could be placed. Deputy Director Collins stated that although there are vacant positions they will not be filled because the funds are not currently in order to fill the positions.

Director Najaka assured the Board that the SPO will work with the all the employees affected by the RIF and will assist them in the applicant process.
STO Human Resource Manager Kiki Arrellano informed the Board that the STO has done everything they can to place Mr. Raymond in a position however there is not a position available.

Board Member Muirhead moved to approve the State Treasurer's Office; reluctantly seconded by Board Member Manzagol. Motion carried.

IX. Classification Studies

a) Construction Industries Division (CID) Criminal Investigator Series and Pay Bands

Michael McEuen, Compensation and Classification Analyst presented the request for approval of the CID Criminal Investigator Series and Pay Bands. Mr. McEuen introduced from the Regulation and Licensing Department CID Division; Pat McMurray, Deputy Director CID Division, Sally Galanter, General Counsel, Amanda Roybal, Manager and Jude Reazin Supervisor with the CID. These positons are not new however they are being reclassified in order to assure that the duties and qualifications are accurately captured.

CID Criminal Investigators perform professional investigative work in the enforcement of state and federal laws, rules and regulations. They gather and document facts, conduct interviews, examine and analyze records and collect evidence for violations of state law and the agency governing statutes, rules or regulations and pursue prosecution of violator of state laws pursuant to NMRA, Rule 6-108, parts A and B including violations of the Construction Industries Licensing ACT., the New Mexico Liquid Propane Gas and Compressed Natural Gas Act and the Manufactured Housing Act.
Deputy Director McMurray gave the Board a description of the classifications and the uniqueness of the positions. The investigators review reports of unlicensed contractors and contractors who do not complete the jobs that they are hired for. Mr. McMurray thanked the SPO for their assistance in reviewing and understanding the positions in order to reclassify the positions.
Mr. McMurray introduced, Jude Reazin, Chief Federal Investigator for CID. Who stated there are currently three investigators who handle the investigations for CID from the beginning of the investigation to the prosecution of the cases.

Board Member Manzagol moved to approve the Construction Industries Division (CID) Criminal Investigator Series and Pay Bands; seconded by Board Member Manzagol. Motion carried.

b) Plumber Series and Pay Bands

Cliff McNary, Classification and Compensation Manager presented the request for the Plumber Classification Series and Pay Bands. This is an issue about recruitment and the need to have the correct classification in order to fill these positions. The agency that utilizes this classification must comply with the statutory requirements of the licensure at the journeyman level. The reclassification of these positions would allow the agencies to hire employees who are not licensed however may have extensive experience in the Apprentice Position.
Mr. McNary introduced H.C. Hawkins, HR Manager at the Department of Health NM Behavioral Health Institute. Mr. Hawkins stated that because NMBHI is in a rural area it is difficult to hire and retain plumbers at $9.49 hourly. The apprentice positions do not require a plumber's license. Implementing the new classification will allow the agency to hire unlicensed plumbers, and give them the opportunity to move up in the classification series. Mr. Hawkins stated the agency currently has five positions.

Board Member Muirhead moved to approve the Construction Industries Division (CID) Criminal Investigator Series and Pay Bands; seconded by Board Member Manzagol. Motion carried.

c) Family Assistance Analyst Supervisor Series and Pay Band

Cliff McNary, Compensation and Classification Manager presented the request for the approval of the Family Assistance Analyst Supervisor Series and Pay Band. This classification is being requested in order to properly classify the positions. This is part of the generic Line II Manager series that was previously presented to the board. The current classification does not currently capture the specific duties of the work being performed in this position. Human Services Department (HSD) is the only agency that utilizes this classification. This classification affects 117 filled and vacant positions. This classification is utilize in the HSD Income Support Division

Mr. McNary introduced from HSD Donna Lopez and Johanna Padilla, Human Resource Managers with HSD.

Board Member Muirhead moved to approve the HSD Family Assistance Analyst Supervisor Series and Pay Band; seconded by Board Member Manzagol. Motion carried.

X. Continuation of Alternative Pay Bands (APB)

Cliff McNary, Compensation and Classification Manager presented the recommendation of Continuation of Existing APB. The APB assignment is a mechanism that provides for the assignment of Temporary Pay Band Adjustments to an appropriately evaluated classification that have been identified as possessing recruitment and/or retention difficulties related to the assigned pay band. The approval of the APB's is in accordance with 1.7.4.10 NMAC Assignment of Alternative Pay Bands and is requested on an annual basis. Since the approval of the Corrections and IT class study and structure. 31-32% of the classified titles had APB attached to them. We are now at 27% of the classified titles that currently have an APB attached to them.

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

XI. Annual Compensation Report

Director Najaka presented the 2016 Classified Service Compensation Update. Classification work is being done in order to assure the pay is more competitive and to assure the job descriptions reflect the current correct. The objective is to establish a classification framework and that the compensation will reflect the current work performed by classified state employees, support agency efforts to attract and retain a qualified workforce and serve as the foundation for future studies and decisions.
System performance is underway. The Corrections study was completed and implemented on July 2, 2016 there are 1,085 Correctional employees (1,433 positions) in the classified service. 727 employees fell below new minimum rates and the General Fund impact to bring employees to minimum was $4.5 million. The Information Technology study was completed and implemented on July 30, 2016. Of 750 IT employees (941 positions) in the classified services: 43 employees fell below minimum rates and the General Fund impact to bring employees to the minimum of the pay band is $40,199. The Engineering Surveying and Architecture Study kicked off on May 12, 2016. The study process is similar to the IT Study. This will affect over 1,000 FTE's and many positions are with the Department of Transportation. The focus is to describe the work more accurately and to address both license and non-licensed work being performed.

Moving forward SPO is creating a new classification structure with 11 new salary structures: Corrections, Information Technology, Engineering and Architecture, Protective Services, Social Services, Healthcare and Health, General Administration, Legal, Management, Scientific and Trades and Labors.
The Corrections and Information Technology Structure has been completed and SPO is currently working on the Engineering and Architecture Study.
Current System Administration:
The statewide classified vacancy rate is at 15.2%, Over 30% of classification have an APB assignment, Average New hire compa ratio is 96.8%, and 70% of new hires have completed their probationary period. Overtime in FY16 is at $32.7 million which is down from $41.2 million in FY15. The current job turnover is at 14.7% voluntary and 2.1% involuntary.
In FY16, 1,112 In Pay Bands (IPBs) were used to target critical positions.
New Mexico continues to offer a rich benefits package that is out of balance with national comparator groups.

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

XII. Annual Review of Safety Sensitive Positions

Alicia Lucero, SPO Quality Assurance Auditor for Agency HR Services Division presented the request of the Annual Review of Safety Sensitive Positions and Omnibus Designation of State Government positions.

In accordance with Designation of Safety Sensitive Positions, Subsection D 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 2017.
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.
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 number of federally designated Omnibus positions in use within state agencies on an annual basis.
A few select agencies request that the State Personnel Board's approval for the removal of the designation for positions those have been reclassified or now have tasks that no longer require a safety sensitive designation. The total positions that the Safety Sensitive/Omnibus designation that will be removed will be forty (40) positions.
Additionally, DOT requests to add the Safety Sensitive designation to 461 already Omnibus designated positions. Therefore, two (2) agencies will maintain positions that require both a Safety Sensitive and Omnibus Designation. The total positions that will be both Omnibus and Safety Sensitive totals 486 positions.
A few select agencies request that the State Personnel Board's approval for the addition of the Safety Sensitive designation. The total positions that the Safety Sensitive designation will be added totals forty-eight (48) positions.
Therefore, the total Safety Sensitive designated positions equals 4,325 positions. The total Omnibus designated positions equate 636 positions. Positions designated as both Safety Sensitive and Omnibus totals 486. Thus, New Mexico State government maintains a total of **5,447** Safety Sensitive and Omnibus designated positions.
Mrs. Lucero recommends the SPB Approval of the 2017 annual review of Safety Sensitive and Omnibus Designated positions in accordance with Designation of Safety Sensitive Positions, Subsection D of 1.7.8.9 NMAC and Omnibus Transportation Employee Testing Act of 1991, Subsection D of 1.7.8.8 NMAC.
Also, the State of New Mexico is excited to continue providing state agencies with two (2) vendors, Norton Medical and Phamatech, who provide Drug and Alcohol Testing services.

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

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

The Board met in Executive Session from approximately 10:46 a.m. to 11:17 a.m. For the record, the matters discussed in closed session were limited to those specified below in the Motion to close.

1. *Espinoza & Espinoza v. New Mexico Children, Youth and Families Dept;* Docket Nos. 15-040 and 15-058, (*Consolidated)*

    - **After careful consideration of the proceedings and the Administrative Law Judges' recommendations in** *Espinoza & Espinoza v. New Mexico Children, Youth and Families Dept;* Docket Nos. 15-040 and 15-058, (*Consolidated)* **the Board moves to adopt the Administrative Law Judges' recommended decision in** *Espinoza & Espinoza v. New Mexico Children, Youth and Families Dept;* Docket Nos. 15-040 and 15-058, (*Consolidated)*; **Board Member Muirhead moved to approve. Motion seconded by Board Member Manzgol. Motion carried.**

2. *Kavanaugh v. New Mexico Children, Youth and Families Dept;* Docket No. 15-071

    - **After careful consideration of the proceedings and the Administrative Law Judges' recommendations in** *Kavanaugh v. New Mexico Children, Youth and Families Dept;* Docket No. 15-071 **the Board moves to adopt the Administrative Law Judges' recommended decision in** *Kavanaugh v. New Mexico Children, Youth and Families Dept;* Docket No. 15-071 **Board Member Manzagol moved to approve. Motion seconded by Board Member Muirhead. Motion carried.**

3. *Montoya & Hill v. New Mexico Public Regulation Commission;* Docket Nos. 16-022 & 16-023 (*Consolidated)*

    - **After careful consideration of the proceedings and the Administrative Law Judges' recommendations in** *Montoya & Hill v. New Mexico Public Regulation Commission;* Docket Nos. 16-022 & 16-023 (*Consolidated)* **the Board moves to adopt the Administrative Law Judges' recommended decision in** *Montoya & Hill v. New Mexico Public Regulation Commission;* Docket Nos. 16-022 & 16-023 (*Consolidated)* **Board Member Muirhead moved to approve. Motion seconded by Board Member Manzagol. Motion carried.**

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

Jessica Cooper, SPO Administrative Law Judge presented the Adjudication update: In November and so far in December, the Adjudication Division received 9 new appeals and disposed of 6. As of today, there are 29 appeals pending. No new appeals of Board decisions have been filed in district court however the Adjudication Division recently learned that an appeal of the Board's decision in the case of Arellano v. DOH has been resurrected. This was a matter that came before the Board in 2012, and in which the Board decided to upheld Ms. Arellano's dismissal. Ms. Arellano appealed to district court, and the Court issued several different orders affirming the Board's decision. Ms. Arellano filed a Motion to Reconsider, and in early November the Board was added as a defendant and received a Summons. The most recent information available indicates that the matter has been removed to federal court. Now that we know about this appeal, we will continue to monitor it.

In Rojo et al. v. DMA, the hearing went forward on October 28, 2016, before Judge Mathew, but no decision has been issued yet.

In Kneale v. CYFD (also a 2012 case in which the Board upheld Ms. Kneale's dismissal), Judge Attrep granted CYFD's motion for summary judgment on Kneale's whistleblower protection act claim on October 3 and dismissed the matter with prejudice on October 25. Ms. Kneale now appears to be appealing that decision to the Court of Appeals.

There is no dispositive action to report in the remaining 5 district court appeals.

XV. Other Business – Next Meeting Date: January 20, 2017

Chair Romero clarified that the 2017 State Personnel Board Meetings will be on Fridays and will be as follows:
March 24, 2017, April 21, 2017, June 16, 2017, July 21, 2017, August 25, 2017, October 20, 2017 and December 8, 2017.

XVI. 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

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