



# New Mexico State Personnel Board State Personnel Office

**SUSANA MARTINEZ  
GOVERNOR**

**Eugene J. Moser**  
Director

**Nivia L. Thames**  
Deputy Director

**State Personnel Board**  
Paul T. Yarbrough, Chairman  
Christine Romero, Vice Chairman

Devon Day Rebecca Long

**State Personnel Special Board Meeting  
State Personnel Office  
2600 Cerrillos Road  
Santa Fe, NM 87505  
September 10, 2013**

## Minutes

### I. Procedural Items

#### Call to Order

The special meeting of the State Personnel Board was called to order by Chairman Yarbrough at approximately 3:30 p.m. on September 10, 2013, at the State Personnel Office, Santa Fe, New Mexico.

#### Roll Call

Eugene Moser, Director, State Personnel Office (SPO), called roll and a quorum was established with the following members present:

Paul Yarbrough, Chairman (by telephone)  
Christine Romero, Vice Chairman  
Rebecca Long (by telephone)

Board Member Day was absent.

#### Approval of Agenda

Board Member Long moved to approve the agenda, seconded by Vice Chairman Romero. Motion carried.

---

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

## II. Vacant Administration Law Judge Positions

Director Moser explained that both Administrative Law Judge (ALJ) positions are vacant; SPO is in the process of recruiting for both positions.

In response to Chairman Yarbrough, Mona Valicenti, Assistant Attorney General, Office of the Attorney General said statute contemplates that the Board may hear cases. Section 10-9-18, Subsection F states "The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at a hearing held pursuant to this section." Chairman Yarbrough said that when situations like this have arisen in the past, another qualified hearing officer within state government has stepped in. Director Moser said he is searching state government for a qualified hearing officer.

Vice Chairman Romero asked if it was feasible to enter into a contract with a hearing officer during the interim. Ms. Valicenti reiterated that a hearing officer may be a member of the board or any qualified state employee.

Chairman Yarbrough encouraged SPO to hire an ALJ baring that there is a qualified state employee to address some of the immediate issues. The concern with having a temporary qualified state employee to hear cases is that they would have to see the case through to the end. Ms. Valicenti added that it may be complicated for a state employee to take time off; however Regulation and Licensing Department (RLD) has hearing officers.

Director Moser said there are currently 17 hearings scheduled that will need to be rescheduled. In addition, one case was heard by a former ALJ. Ms. Valicenti said the parties are supposed to submit their Findings of Facts and Conclusions of Law on September 30, 2013. Director Moser added that the process for a hearing is to record it. Chairman Yarbrough added that the hearing could be problematic to the extent that the ALJ would be the one to assess the veracity of particular witnesses. If it is not an issue, the facts could be determined based upon the transcript. Chairman Yarbrough asked if a new hearing officer who did not hear the matter can step in and prepare a recommended decision based upon a transcript or recording or if the parties need to come back to a new ALJ for a new hearing. Vice Chairman Romero expressed concern with a decision being made off of a recording and asked if there would be an opportunity to allow the affected state employee to determine how they would like to proceed. Ms. Valicenti said due process is the notice and opportunity to be heard; the parties had that when they had their hearing before the ALJ. Ms. Valicenti suggested, unless the parties are opposed, that the Board, or one member of the Board with her assistance, review the recording and prepare a recommended decision for the whole Board to consider at the next Board meeting. If the parties object, then a new hearing can be scheduled when there is a new ALJ. Chairman Yarbrough said he is not adverse to having a Board member review the recording and preparing recommended findings of fact and conclusions of law. Director Moser reiterated that SPO is in discussion with two agencies that have hearing officers that are familiar with the process to assist during the short term. Ms. Valicenti will research and advise the Board at its next Board meeting if a new ALJ can be substituted for the ALJ who heard the case and prepare a recommended decision based on the findings of facts and conclusions of law.

## III. Executive Session

---

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



AGENCY PARTNER  
NMCENTENNIAL.ORG

**Vice Chairman Romero 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 Long:**

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

The Board met in Executive Session from approximately 3:52 p.m. to 4:07 p.m. For the record, the matters discussed in closed session were limited to those specified in the Motion to close.

1. *Melvin Ortiz and Eric Lucero v. NM Department of Transportation*; 13-028 & 13-032; Notice to Vacate;
2. *Danni Sutana v. NM Economic Development Department*; Docket No. 12-099; Order Granting Protective Order; and
3. *Edmund Pingue v. NM Division of Vocational Rehabilitation*; Docket No. 13-030; Stipulated Pre-Hearing Order.

**Vice Chairman Romero moved to grant Chairman Yarbrough the authority to sign off on any pleadings submitted to the State Personnel Office on pending cases until an ALJ has been hired, seconded by Board Member Long. Motion carried.**

#### **IV. Adjournment**

With no further business, **Vice Chairman Romero moved to adjourn the State Personnel Board meeting at approximately 4:00 p.m., seconded by Board Member Long. Motion carried.**

Approved by:

  
Chairman Yarbrough  
State Personnel Board

Attest:



Eugene Moser, Director

