

New Mexico State Personnel Board

State Personnel Office



Michelle Lujan Grisham
Governor

State Personnel Board
Christine B. Romero, Chair
Laura A. Liswood, Vice Chair
Jerry Manzagol, Member

Ricky A. Serna
Acting Director

State Personnel Board Meeting
State Personnel Office
Electronic/Telephonic Meeting via ZOOM
Tuesday, May 11, 2021
MINUTES

- Chair Romero called the meeting to order at 9:00 am. Acting Director Serna led the Pledge of Allegiance and called for a Moment of Silence
- Acting Director Serna called roll – Chair Christine Romero, present; Vice Chair Liswood, present; Member Manzagol, present. Quorum established.
- Call for Public Comment was made by Chair Romero. A poll was issued for public comment for those on a computer. For those on Zoom by phone, they were polled individually by Melanie Morgan. No public comment requested.
- Chair Romero read the practices for the Zoom meeting
- Chair Romero motioned for the agenda to be adopted as presented, member Manzagol second, roll call, agenda unanimously adopted
- Chair Romero motioned the minutes from the March 12, 2021 meeting be adopted as written; Vice Chair Liswood second, roll call, minutes unanimously adopted

General Public Comment – No public comment requests received

Director's Report - Acting Director Serna presented the following report

- As many of you know, in addition to responsibilities to the State Personnel Office, I have been asked to head up the DWS agency on a temporary basis. Serna thanked both groups for understanding their roles and responsibilities which enable him to do both important jobs.
- State Personnel has continued our collaboration, which started last year, with the Governor's Commission on Disability and the Southwest ADA Center to provide learning opportunities on the Americans with Disabilities Act for our HR community. In 2021 we will again be providing an "ADA for HR" series of three live webinars, one of them again in partnership with the federal Equal Employment Opportunity Commission (EEOC). The first of this year's series will be a session later this month on "Managing and Accommodating COVID-19 Long-Haulers." New this year is a monthly newsletter sent to our HR partners with information on free ADA Title I

learning opportunities including webinars and articles. The HR community has responded very positively to these educational opportunities, which in turn have helped better equip our HR partners to serve the employees in their agencies.

- The SPO Labor Relations team has successfully completed CWA negotiations and supplementals. Thank you to Sandy Martinez for leading the negotiations.
- CWA is taking the completed CBA out to their members for ratification.
 - Once CWA ratifies the CBA, notifies me/State, the parties will sign on a new 3-year CBA
 - Trainings will begin shortly thereafter.
- AFSCME Master portion of the CBA negotiations are complete.
 - 5 Agencies have completed their Appendix negotiations.
 - 12 Agencies remaining to complete their Agency Appendix negotiations
- A couple of weeks ago, SPO officially announced the 2021 Summer Internship Program to agencies with a 2-tier approach.
 - If an agency has sufficient budget to create and fill summer intern positions, they will follow the normal business process to request to create a new position.
 - If an agency does not have sufficient budget, they may leverage a partnership with the Northern Area Local Workforce Development Board (NALWDB) to have an intern (or more than one) deployed to your agency.
 - Training Team has developed a workshop that prepares agencies for business processes and for providing a strong internship experience.
 - SPO will oversee the following for the cohort.
 - Statewide onboarding
 - Mid-summer check-in and networking
 - End of Summer summit
 - Pre/post program survey
 - SPO is bringing on an intern through its standing partnership with Harvard. Serna welcomed Ahmed Alsheik as this year's intern, he's from Deming. He will spearhead the above activities.
 - Thanked the training team for conducting trainings on the summer internships to be sure the experience is positive and productive. Definitely a team effort. We are a little bit behind in our usual roll out, so appreciate the team effort.
- On April 26, SPO issued memorandum 2021-002, which replaced memorandum 2020-002. Memo 2021-002 effectively eliminated the exemption request process and restored all HR action approval and routing processes as required by Board Rule. Back to business as usual.
 - Team did a great job clearing the queue of pending actions.
 - Vacancy rate still hovering around 20%
- On May 6, SPO issued a memo providing all state employees with an update on returning to work in-person.
 - SPO team has drafted the following policies:
 - In-office COVID-safe practices. Includes contact tracing, ADA accommodations for COVID long haul effects.
 - Non-mandatory telework policy.
 - We are finalizing the necessary revisions and will begin discussions with union partners before drafts are sent to agencies.
 - Agencies will provide plenty of time to implement the return to the office policies.

- ADA accommodations for long-haul issues are being considered; thanked Jaime Phillips for her efforts in this regard.
- On the note of memos, staff are in the process of memo clean up and repeals. Thank you to Leane Madrid for reviewing several memos. We are evaluating the spirit of the memos to see if they are still relevant, and the application is current. We will post those documents to the website as we progress through this project.
- Stand for questions:

Vice Chair Liswood thanked Acting Director Serna for the comprehensive report. She stated there is a growing concern/knowledge with what happens in hybrid environments. There is potential for disadvantaging those who are working remotely and advantaging in-person workers. Suggest SPO put out recommendations about how to ensure that hybrid workplaces are strong workplaces for everyone. Helping managers navigate that would be helpful.

Acting Director Serna responded about what arrangement would be made in a “normal environment” along with competing demands on employees (child care, etc.). He acknowledged the research done and anticipate leveraging the information out there. We anticipate the need to pivot through this process to ensure fairness. Will keep you updated on what we learn and any challenges and motivation to possible changes.

Chair Romero stated she has been very popular after Acting Director Serna issued his letter about returning to the office. Concern about vaccinated individuals, non-vaccinated. Spoke of her husband’s company who is requiring all be vaccinated to work at the company. State Employees are very antsy about this.

Serna responded that we are still having these conversations – pros/cons with connecting return to office with vaccinations. We will have answers along the way address the concerns.

Chair Romero commented about the project of updating previous SPO memos; thanked Leane for leading the effort. If a memo is no longer valid, do you retract?

Serna responded that Leane is a tremendous resource based on her institutional knowledge and long-standing experience. Memos may appear that they are in conflict we issue a repeal memo referencing the memo; may issue updated memo and post to the website.

FY22 Operation Budget- Stuart Hamilton, CFO, presented the operation budget for FY22.

Mr. Hamilton reported that FY21 budget was: \$4,147.4
The FY22 budget is: \$3,835.1

This is a decrease of \$312.3 or 13%

General Fund decrease: (\$145.9) or (3.8%)
Other Transfers decrease: (\$166.4) or (63.5%)

Mr. Hamilton explained the reason for “other transfer” decrease is we are in the process of winding down the HR Services function and are in discussion to eliminate this service.

Personal Services decrease: (117.5) or 3.3%
Contractual Services decrease: (23.0) or 31.1%
Other decrease: (171.8) or 36.7%

Causes for decrease - Rent in Albuquerque office and DoIT fees went down.

The FY22 Operating Budget includes a 1.5% increase for all permanent, Classified personnel.

Stand for questions:

Chair Romero asked for a reason why shared services is being phased out as she thought it was beneficial for the smaller agencies to have this SPO service

Acting Director Serna replied that there was a plan to transition out of HR Services and acknowledged Leane, who has done a great job with the 10 agencies we currently work with. Strategy is to ensure

agencies have a plan in place to sustain in-house HR functions. We will completely phase out HR Services when we are confident it is sustainable at agency level. No rush on the timeline. Chair Romero thanked Mr. Hamilton for his presentation

Discussion of Proposed Changes to Board Rules - 1.7.1 NMAC, 1.7.4 NMAC, and 1.7.7 NMAC

Chair Romero introduced Jessica Cooper, General Counsel for the State Personnel Office, who presented information on potential amendments to the State Personnel Board Rules.

Sections 10-9-10 and 10-9-12 NMSA, give the Board the authority to promulgate regulations to effectuate the Personnel Act, and give the State Personnel Office Director the authority to recommend to the Board rules considered necessary or desirable to effectuate the Personnel Act. So on behalf of Acting Director Serna, Ms. Cooper discussed the next set of recommended amendments to the Board Rules. To be clear, this was only be an introduction to the recommended amendments. The Board was not asked to take any action on the rules. That will not happen until June 18, which is the date the Board's rulemaking hearing is set for. Meanwhile, the proposed rule amendments have been available on the State Personnel Office website since April 7. And we are already in the middle of the notice and comment period required by Board Rule 1.7.13 NMAC. The public notice and comment period will officially run through May 30, but public comment will also be taken at the Board's June 18 rule hearing.

Regarding the content of the rule changes, amendments are being recommended to Board Rules 1.7.1 -- General Provisions, 1.7.4 – Pay, and 1.7.7 – Absence and Leave. Some of the proposed amendments are actual changes, most are more clarifications.

The recommended rule **clarifications** include:

- Defining “base pay” or “base salary” as the rate of compensation paid to an employee **excluding** temporary increases and pay differentials
- And then clarifying that terminal annual leave payout – that is, the annual leave payout an employee separating from state employment receives – is to be paid at the current hourly rate of the employee's **base salary**. (1.7.7.8 (G).)
- Additional associated clarifications would also indicate whether base pay or overall pay is being referenced in various other Board Rules.
- These clarifications concerning base pay and base salary are in keeping with State Personnel's current interpretation of the Board Rules and in keeping with Department of Finance and Administration practice.

- Other recommended clarifications concern the Board Rules on Family and Medical Leave Act (FMLA) Leave; in particular, confirming that FMLA Leave is available to care for the serious health condition of a domestic partner. (1.7.7.12(B).) Again, the recommended FMLA Leave clarifications do not create anything new under Board Rule but are intended to make the existing Rules clearer and more explicit.

- Another recommended clarification pertains to bereavement leave and would confirm that bereavement leave is a form of administrative leave and would group the bereavement leave provisions into one new section of the Board Rules. Again, these recommended clarifications are intended only to codify what already occurs in practice and to better organize the bereavement leave provisions within the Board Rules. (1.7.7.10(H) à 1.7.7.20.)

- There are also several other minor recommended clarifications that clean up various provisions, definitions, and descriptions in the Board Rules, which are not substantive.

The substantive recommended Board Rule **changes** include:

- Removing the annual 10% cap on in pay band adjustments. (1.7.4.12(C).) This amendment is being recommended essentially to improve administrative efficiency. The experience of the State Personnel Office is that the existing 10% cap on in pay band salary adjustments causes an unnecessary impediment when a greater increase is required to achieve appropriate placement for an employee. Under the current Rules, an employee is often given the maximum 10% in-pay-band increase allowed in one year plus a temporary increase or temporary pay differential to achieve appropriate placement and get them where they actually need to be, and then the temporary increase will be phased out the following year, when a second in pay band increase can eventually be granted. It would streamline things to simply grant the employee the in-pay-band increase that would achieve appropriate placement at one time, with one action. And the changed Board Rule would keep the same checks and balances in place by allowing such in pay band increases only once per fiscal year, only with the approval of the State Personnel Office Director, only subject to budget availability, and only reflective of appropriate placement.
- Another recommended rule change would remove the out-of-state pay differential from the Board Rules. (1.7.4.13(D).) The current Rules allow for a potential pay differential for employees working or residing out of state, but this provision is no longer used and should be removed. There is no indication of an out-of-state differential being paid as far back as we can see in the SHARE system, which is 2006.
- The next recommended rule change would amend the dusk to dawn pay differential allowed by the Board Rules. (1.7.4.12(M).) Currently, the Rules provide that employees shall be paid at least an additional \$0.60 per hour for hours worked during the dusk to dawn timeframe, or between 6pm and 7am. The recommended amendment would give agencies the choice not to pay the dusk to dawn differential to employees who are working hours between 6pm and 7am as a result of their alternative work schedule request. The thinking here is that when an employee has already been granted the privilege of their desired alternative work schedule, they do not also necessarily need an incentive or extra pay for working those hours. Under the recommended amendment, agencies **could** continue to pay a dusk to dawn differential in such instances but would not have to.
- And the final recommended rule change would clarify that an employee is not entitled to administrative leave to participate in a judicial or administrative proceeding in which the employee is a party to the proceeding and adverse to an agency or the State of New Mexico. (1.7.7.14(D).) Under current Board Rule, all employees are entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury, court, or a federal or state agency. What this means in practice is that even employees who are bringing an action against their agency – for example, in the context of a disciplinary appeal – or against the State of New Mexico, are given administrative leave if their own legal counsel subpoenas them. While employees acting solely as witnesses should receive the benefit of administrative leave for their

participation in such legal proceedings, it is unreasonable for the employee bringing the action against their agency or the State to get paid to do so.

- Stand for questions – Chair Romero commented that rule changes are a big responsibility for board members and thanked Ms. Cooper for her presentation.

Executive Session

Chair Romero motioned to enter into executive session, member Manzagol second; roll call; motion carried unanimously. Entered closed session 9:46 am. Now off the record.

Chair Romero announced the board is back in open session at 10:00.

Regarding the Cordova matter Vice Chair Liswood read the recommendation on the Cordova matter, docket 20-005 and moved to adopt ALJ recommended decision; member Manzagol second; roll call; motion carried unanimously

Regarding the Jimenez matter Vice Chair Liswood read the recommendation read for Jimenez vs NM CYFD, docket 20-019, move to adopt the recommended decision; member Manzagol second, roll call – unanimously carried.

Adjudication Litigation Update – Janelle Haught presented the update

In the last 4 months, we have received 11 new appeals and disposed of 5; 54 are still pending. She was pleased to announce that the department was presently fully staffed and introduced Aaron Baca as the new ALJ. Chair Romero welcomed Mr. Baca and stated she was happy to hear we are fully staffed and able to proceed with clearing the backlog.

Other Business -

Next Meeting Date: Friday, June 18, 2021

Adjournment – member Manzagol moved, Vice Chair Liswood second, roll call for adjournment; unanimously carried. Meeting was adjourned at 10:06 a.m.

Approved by:



**Laura Liswood, Board Chair
State Personnel Board**

Attest:



**Ricky A. Serna
Acting Director**

