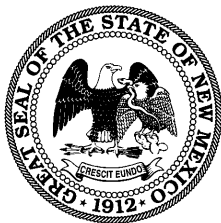


# New Mexico State Personnel Board

## State Personnel Office



**Ricky A. Serna**  
Acting Director

**Michelle Lujan Grisham**  
Governor

**State Personnel Board**  
Laura A. Liswood, Chair  
David F. Cunningham, Vice Chair  
Cristin M. Heyns-Bousliman, Member  
Carol A. Parker, Member

### State Personnel Board Meeting Electronic/Telephonic Meeting via ZOOM Friday, September 17, 2021 MINUTES

- I. Procedural Items
  - Chair Liswood called the meeting of the New Mexico State Personnel Office to order at 9:05 a.m. and asked Acting Director Serna to lead the Pledge of Allegiance.
  - Acting Director Serna called the roll: Chair Liswood, present; Vice Chair Cunningham, present; member Heyns-Bousliman, present; member Parker, present. Acting Director Serna stated we had a quorum.  
Chair Liswood noted that also present are Acting Director Serna, Board Administrator, Denise Forlizzi, Assistant Attorney General, Valerie Joe and outside counsel, Samantha Kelly. Technical support provided by Prakash Bhakta and Drew Lovelace.
  - Chair Liswood asked for those interested in making public comment on an agenda item, to identify themselves. An electronic poll was launched and those attending only on their phones were asked to unmute. No requests for public comment received
  - Chair Liswood reviewed the ground rules of the virtual meeting.
  - Approval of Agenda: Chair Liswood proposed moving action 7 to item 4 and subsequent matters moved down accordingly to accommodate one of the presenters. Vice Chair Cunningham second; roll call conducted by Acting Director Serna. Amended agenda adopted.
  - Approval of Minutes from August 6, 2021, Chair Liswood proposed approving the minutes as written, member Parker second. Acting Director Serna conducted roll call. Minutes approved unanimously.
- II. Public Comment – Chair Liswood noted there were no requests for public comment.
- III. *Discussion Item:* Director's Report – Acting Director Serna offered the following:

- Serna thanked the board for participating the last week's retreat and staff for their presentations.
- He recognized the above and beyond efforts of the HR community across the state for their work on implementing Public Health and Executive orders. Over the past handful of months, they have rolled out a non-mandatory telework policy, managed return-to-office activities, ensure understanding of mask wearing, social distancing, positive case reporting requirements.
- Working on a compensation recommendation for the upcoming session to move the needle on minimum pay.
  - Working with DFA, AFSCME, CWA to ensure a strong methodology
- Began a discussion with HR community to discuss vacancy rates, in particular among HR and budget and finance positions along with discussing some of the struggles of retention
  - Because of their familiarity with the state's SHARE System, mobility among agencies is very common. We need to work collaboratively to establish a network that allows for sharing resources and sharing qualified candidates in these fields. We've been having Conversations at state agencies; budget/finance divisions, HR divisions. Working to work more collaboratively to share qualified candidates with other agencies. Working on long term solutions.

Stand for questions

Chair Liswood thanked Acting Director Serna and the team for the very informative retreat we engaged in stating she found it very worthwhile.

Member Cunningham stated that on minutes from last meeting on page 3 it reflected that Acting Director Serna was working on cleaning up the general memorandums used over the past several years. Where does that stand? Leane Madrid stated that we are at a place where we have covered those memos that needed to be updated/rescinded and all is current.

Member Cunningham also mentioned on page 4 of the minutes from the September meeting, we talked about vaccinations and mask rules; are agencies complying? Acting Director Serna stated, yes, so far, things are mostly going well. We are monitoring vaccination rates and saw an increase between week 1 to 3 since the policy was in place. We are pacing out the gathering of data. Also checking on neighboring states that have a network that discusses guidance to ensure consistency with agencies on discipline and religious exemptions.

Member Cunningham asked what percentage of the workforce needs testing each week. Acting Director Serna stated we send out an electronic survey for that data and will have updated results in a week or two. We will send out to the board.

Member Cunningham offered thanks for the education process.

IV. *Action Item: Safety Sensitive Review*

Safety Sensitive Coordinator, Cynthia Anaya, gave her report by agency, Department of Health (DOH), Department of Transportation (DOT), Commission for the Blind

(CFB), Energy, Minerals and Natural Resources Department (EMNRD), and New Mexico Corrections Department (NMCD). Ms. Anaya recommends approval of the out-of-cycle requests. Stand for questions.

Chair Liswood thanked her for the presentation.

Member Cunningham asked where designation is being changed from safety sensitive to non-safety sensitive, do any incumbents have any HR impact? No, there are no employees in those positions at this time, they are vacant.

Member Heyns-Bousliman asked if board approval is required, and if so, what are we approving – what changes occurred to make them safety sensitive or not? How are we supposed to know substance of the requests? Ms. Anaya stated the board needs to review and decide as to whether or not they will accept. If you have questions, you can ask for more information. If required to approve ask more questions on specific positions.

Member Heyns-Bousliman asked about NMCD – 5 positions require safety sensitive designation. What makes the Office Admin Advanced position a SS position? Leane, asked a representative to be present. Confirmed attendance for this meeting to answer questions. Brenda Pohl not available. 2<sup>nd</sup> attending Lisa Zold. Stand by for a representative.

Member Parker asked about the declassification for CFB; does this position have contact with the public? Original position was public facing and home aid, the request to reclass to IT position when the incumbent retired to create the vacancy for reclass. Kevin Romero, Deputy Director, CFB answered that the IT position provides assistance to PIO, no supervisory role and in service duties are to agency employees and network. Interaction with public is minimal at best.

Acting Director Serna explained the definition of safety sensitive for clarification.

NMCD representative, Brenda Pohl joined the meeting in progress and explained that the positions are being classified as Safety Sensitive because they are located inside prison unit; all positions require Safety Sensitive because they are around inmates. Any position that is in a secure area or has access on a frequent basis, is deemed to be Safety Sensitive.

Chair Liswood motion to approve the positions as presented. Member Cunningham second. Roll call approved unanimously.

V. *Action Item:* Office of the Attorney General request for approval of Exempt Policymaking Positions

State Compensation and Testing Manager, Cliff McNary introduced members from the Attorney General's Office present: "JR" Rael, Chief Administrative Officer, Matt Baca, Chief Counsel, Anne Kelly, Chief Deputy Attorney General for Criminal Affairs and Valerie Gallegos, HR Manager.

Mr. McNary referred to the documents provided and clarified what the AG's office is asking for are eight full time employees (FTE) housed under 5 classification and not 5 FTE as written. An analysis was performed to better define Policy Making exemptions.

The department received the job content, and we are in agreement that content matches what an exempt policy making position is and does. Motion to accept/approve the policy making exemption request. Chair Liswood asked if they have more data to supplement. AAG, Valerie Joe recused herself from the discussion and noted General Counsel, Jessica Cooper is available if needed. Questions? Member Cunningham asked 1. Are there existing exempt policy making positions in the AG office? Mr. Rael stated there are not and Mr. Baca explained that by bringing the agency to the classified system so, this is a change. Previously all positions in the AG office were exempt and not under a specific designation.

2. Are these at-will positions? Mr. Baca answered, yes, they are at-will. Member Cunningham observed that he had never hear of needing 8 positions to apply policy at the top of the heap. Mr. Baca stated they need 8 people according to current structure. It's how it's operating today.

Chair Liswood mentioned adjudication around this issue from the past. Mr. Baca stated that the cross-walking of the agency to classified system was the result of litigation from former staff. Court of appeals determined they were covered by classified service. Adjudication around agency itself was subject to State Personnel act. Remaining cases will be adjudicated. These requests will not have an impact or prejudice on future cases.

Mr. Rael said that the agency has 227 full-time employees, so the request is for less than 10 percent of the agency. None of these positions have anything to do with the adjudication process.

Chair Liswood asked General Counsel Jessica Cooper to confirm. Ms. Cooper confirmed that none of the employees in the Attorney General's office are in adjudication and are in no way related to the request.

Chair Liswood offered a motion to approve the 8-exempt policy-making positions, Member Cunningham second. Roll call: motion passes unanimously.

VI. *Action Item:* Class Study Results

Mr. McNary stated they modified the action item for purposes of time; Comp and Class did a class study for Department of Cultural Affairs (DCA) as a group, so he is presenting the data as a single item. Mr. McNary introduced DCA representatives Patrick Moore Executive Director of NM Historic Preservation Division, Jeff Pappas Program Manager Historic Preservation Division, and Derek Pierce Program Manager Archeological Records Management Section. The Class studies were necessitated by the reality that the positions have evolved so far out of current classifications. There are 12 positions around states that educate and guide the public, along with historical educating of the public as well as research and preparations based on emerging facts of each site.

Mr. Pierce stated they were recruiting issues with former class

Mr. Pappas – introduced himself as liaison and as a consultant to ensure compliance and to be sure they are protecting cultural resources across the state. Inclusive for all jobs that are happening

Mr. Moore gave an overview; recruiting challenges and disparity between what they are expected to do and what they do on paper. Preserve, interpret rich and vibrant history across cultural sites. The Class changes will enhance recruiting efforts

Board questions?

Chair Liswood asked what the pay band was for original forest and conservation. Mr. McNary and Mr. Moore stated it is currently a PB50. Facilitated job evaluations on the class and qualification standards as Subject Matter Expert (SME) in their area. PB60 and PB70 for these positions will help with retention and recruiting. DCA does not have the ability to promote employees into new Pay Band. Implementing the class study has zero cost impact. After implementation, the agency is free to use rules as tools once the dust is settled on implementation of classifications. Chair Liswood asked about the positions since they are very specialized, do you have ability to recruit now? Mr. Pappas replied they are recruiting for the right skills, so specialized positions will be easier to fulfill requirements with appropriate minimum qualifications.

Mr. Moore stated that the discipline has advanced dramatically over the years and decades. As skills are more refined, an increased Pay Band will be an asset for all visitors to state. Learn about history of the state. Mr. Pierce added the timing is fortuitous due to wave of retirement in department. This change will help tremendously with recruitment. Helps with retention as well.

Mr. McNary stated the some of the skills for an interpretive ranger included the need to be tactful and respectful in dealing with customers/clients who have a different interpretation of history.

Chair Liswood offered a motion to accept the DCA class study and assigned Pay Bands as presented, member Cunningham second; Roll call approved unanimously

Mr. McNary presented the Fire Fighters training academy instructor class study and introduced John Kondratick, Fire Support Bureau Chief for Department of Homeland Security and Emergency Management (DHSEM).

He explained that the unit was transferred from Public Regulation Commission (PRC) to DHSEM. The position was terribly misclassified as a generic instructor, so they were getting applicants that were teachers only, not applicants with fire fighter experience. Mr. Kondratick explained the overview of the fire academy and recruitment of former fire personnel involving emergency response and firefighting. Currently, there are no instructors due to departures and retirement. Recruitment and retention have also been issues.

Chair Liswood asked how are you graduating firefighters? Adjunct instructors provide services, there are 25 or so with working certification.

Mr. McNary requested a motion to approve the classification and Pay Band as presented, we recommend market adjusted Pay Band which offers a higher Pay Band

to aid in recruitment and filling positions quickly. With a 100% vacancy rate, this is a priority of Governor's office and DHSEM. These positions have to go all over the state to train. We are talking about 6 positions. Member Cunningham asked how much do you pay Adjunct trainers vs the pay under this proposal? Mr. McNary stated adjunct trainers make \$175/day.

Chair Liswood asked given the extraordinary set of circumstances these days, is there anything else SPO can do to support? No instructors in the training academy, must be remedied. Mr. McNary stated with approval, implementation will be instantaneous. Will go straight to recruitment – John K Recruitment tools? JK as we make the move to DHSEM, we will be better to recruit; address pay and retention, word will get out and it will better help public safety. He appreciates the support as we implement.

Chair Liswood asked for a report from this department in 6 months with updated status.

Acting Director Serna stated our office is providing HR support during this transition; Department of Financial and Administration (DFA) is working with DHSEM ensuring they are getting to where they need to be ASAP. We will expedite additional actions.

Chair Liswood offered a motion to approve the class study as presented; member Heyns-Bousliman second, roll call - motion adopted unanimously.

VII. *Action Item: FY23 Appropriation Request*

Stuart Hamilton, CFO presented the request for the FY23 appropriation. He referred to the information in the board binders and the 3 sections used for the request. The 200 category – personal services; 300 - contractual; 400 category - other. The request for FY23 was delivered to DFA on September 1, 2021, as required. SPO's request was robust and conservative at the same time. Robust in that the request is 30 percent higher than FY22; last 2 years have been relatively flat for budgeting purposes. The request is \$4.7M made up mostly of personal services and benefits; the request utilizes a 5 percent vacancy factor, which is the minimum vacancy factor we can utilize for an agency our size. FY23 revenue reduction is a direct result of HR Services going away in order to renew our commitment and focus on core business functions – oversight, training, and guidance. Administrative Law Judge is a priority in order to decrease the amount of time it takes for the appeal process; cross-training for agencies to streamline the process.

The next priority is a division director for QADA which will elevate the agency's ability for predictive analytics; aiding in retention and recruitment. 4 additional analysts will help to redistribute the work load.

The next priority – contractual services category includes consulting services for training, website development and security for campus to ensure employees and constituents safe. Stand for questions

Chair Liswood asked Mr. Hamilton - if you were a member of this board listening to yourself, what would you want to ask yourself?

Mr. Hamilton replied that Legislative Finance Committee (LFC) and DFA asks that we meet with the Governor's office to ensure support and then asks if this is enough money to do what you are required to do by statute? He stated this is a robust request asking for more full-time employees (FTE) to do our duties. He thinks the request is conservative in 400 category and that it is a good request which will allow us to meet statutory obligations.

Chair Liswood asked Acting Director Serna if he concurs? Serna replied that we believe wholeheartedly we have capacity to satisfy at a minimum, and to respond to agency requests with data. Our capacity is there with some caution; our turnover is a consequence of workload. Our analysts can earn as much or more with other agencies and have lower workloads. With the increased capacity in our request, we can increase our retention rate; can satisfy ongoing Data Analytics to better understand what's happening before it happens. It is a simple request. Strategic placement of resources to help so we can do more.

Chair Liswood thanked them and appreciates the overview and offered a motion to approval the FY23 appropriation request. Member Cunningham second. Roll call – motion approved unanimously.

VIII. *Discussion Item: Future Board meetings 2022*

Board Administrator Denise Forlizzi provided an overview of selecting board dates and asked for discussion about any changes preferred by the board.

Member Cunningham asked if there is anticipation that we be able to meet in person and if so asked if we had the technology to do a hybrid model? CIO Prakash Bhakta stated yes, there is technology that can be configured and set up – possible to do in-person and a broadcast that will enable the public to participate. We have capabilities with portable mondo pads to see who is online; camera stream would go to webinar format to rest of participants. Can move board to a breakout room for Executive Session.

Member Parker – asked if we can and stick with Friday and if so, can we begin January 14 as she is involved with Legislative Session which begins January 18.

Member Heyns-Bousliman agreed with member Parker that Fridays are easier days for her schedule.

Ms. Forlizzi will prepare a board meeting calendar for 2022 based on this information for vote during the next board meeting.

IX. *Discussion Item: Adjudication Litigation Update*

ALJ Haught – presented the following update:

In the first quarter of fiscal year 2022 (July, August, and September), Adjudication received 7 new appeals and disposed of 7 appeals. There are currently 54 appeals pending.

Final Decisions that have been appealed to District Court. Action on four cases:

- District Court acted on appeal:

*Landau, et. al. vs. NMAGO; 20-002* – Ms. Landau (and other Appellants) filed Motions for Summary Judgment. On November 6, 2020, I granted the Motions in a Recommended Decision, recommending reinstatement and backpay, as was requested by the Appellants. On December 11, 2020, the Board adopted my Recommended Decision, ordering reinstatement and backpay, as was requested by the Appellants, including Ms. Landau.

On January 10, 2021, Ms. Landau filed a Notice of Appeal with the District Court alleging that the Board should have reinstated her to a like position, not a position with the NMAGO. She amended her appeal alleging that the NMAGO failed to give her an annual increase for one of the years for which she was entitled to backpay.

On July 29, 2021, the District Court issued an Order Affirming the December 11, 2020, Final Decision of the Board. Ms. Landau filed a Motion for Reconsideration, which is pending.

- Appeal withdrawn:

*Cordova vs. NMCD; 20-005* – Mr. Cordova was dismissed for being AWOL four times within a 12-month period, in violation of an NMCD policy and for being insubordinate. Based on the Department's evidence and testimony, Mr. Cordova was AWOL only one time and previously appropriately disciplined for the one AWOL. And NMCD did not dismiss employees for being insubordinate.

On March 31, 2021, I drafted a Recommended Decision recommending reinstatement and backpay. On May 11, 2021, the Board adopted my Recommended Decision. On June 10, 2021, the NMCD filed an appeal with the District Court. The NMCD took no further action on the appeal and withdrew the appeal on August 30, 2021.

- New appeal filed:

*Madrid vs. NMDoH; 19-051* – Ms. Madrid was dismissed for being negligent and insubordinate.

On July 13, 2021, Judge Baca drafted a Recommended Decision adopting the Department's dismissal. On August 6, 2021, the Board adopted the Recommended decision. On September 1, 2021, Ms. Madrid filed a Notice of Appeal with the District Court in San Miguel County. A Hearing has been set for October 2021.

- One appeal pending in District Court:

*Valencia v. NMCD; 19-011*

District Court Appeal filed on June 29, 2020. Judge Mathew

Came before Board on June 5, 2020; the Board adopted the Recommended Decision that reversed the termination for failing to follow the policy the NMCD relied on to dismiss the employee, disciplining the employee with a LoR.

On December 21, 2020, the District Court denied the NMCD's Motion to Stay the action pending the appeal. On January 11, 2021, the NMCD filed a Motion to



Reconsider the Stay. No order has been entered on Motion for Reconsideration. NMCD has taken no further action. Stand for questions

Member Cunningham asked in district court who represents the board? AAG Joe replied that she represents the board in the Madrid case. We will discuss in exec session. AAG Joe represents the board for appeals.

No further questions – Judge Haught thanked the board for the opportunity.

Chair Liswood moved for the board to enter Executive Session and will then return for questions and return to Executive Session. Member Heyns-Bousliman second – roll call; approved and off the record 10:54 am

X. Executive Session

A. *Administrative Appeals. See NMSA 1978, Section 10-15-1(H)(3)*

1. *Rodriguez, Joshua v. NM Dept. of Health; Docket No. 20-018*
2. *Wilkerson, Richard v. NM Children, Youth and Families Dept.; Docket No. 19-037*

B. *Pending Litigation. See NMSA 1978, Section 10-15-1(H)(7)*

1. *NM Corrections Dept. v. NM State Personnel Board, ALJ Baca, and Nhan Nguyen, D-101-CV-2021-01797*
2. *Madrid, Antoinette v. NM Dept. of Health and NM State Personnel Board, D-412-CV-2021-250*
3. *Colomo, Matilde, et al. v. NM State Personnel Board and NM Regulation & Licensing Dept., D-101-CV-2021-01676*

Chair Liswood stated the board is back in session and on the record at 11:43 Matters discussed limited to the items on the agenda; no votes or official actions taken

Chair Liswood asked ALJ Baca and ALJ Supervisor Haught be available for questions.

On the Rodriguez matter she read exceptions 1.7.12.21, parties have opportunity to file exceptions to recommended decisions. Submitted untimely; party given 2-3 weeks to file exceptions. We can change the process and noted no exceptions were submitted untimely.

August 18 the recommended decision was sent to the parties; hearing was September 8. This applies to the Wilkerson matter as well.

ALJ Supervisor suggested an alternative to wait until we receive exceptions and send the entire packet at one time, rather than piecemeal to the board.

Prefer to receive everything at once to hear appeals as timely as possible. Received exceptions late and now we must decide using this information. It was decided that going forward, ALJ wait until all the documents are received and cut down time given to the parties to file exceptions.

Chair Liswood asked ALJ Haught about the Rodriguez matter and if there was anything she would like to address. ALJ Haught cited 1.7.12.18 G the hearing was conducted according to the rules of evidence; and 1.7.12.18 E oral evidence is taken under oath. Testimony is evidence which is one issue raised; in the decision itself, the decision was not based on progressive discipline.

Chair Liswood asked ALJ Baca in reference to the Wilkerson matter if he had read the exceptions? If so, is there anything he wanted to address. ALJ Baca replied he reviewed it and looking at the exceptions feels the recommended decision addresses all the points.

Chair Liswood moved for the board to enter Executive Session, member Parker second; roll call – unanimously approved and off the record at 11:52

XI. *Action Item:* Motion on Administrative Appeals – back in open session 12:16 pm

Rodriguez matter - motion presented by Member Heyns-Bousliman who read the decision – move to adopt ALJ decision including findings of fact and conclusions of law; Member Parker second. Roll call. Motion passed unanimously.

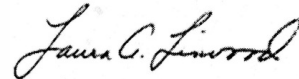
Wilkerson matter – Member Parker read the decision and moved to adopt ALJ decision. Member Cunningham second. Roll call. Motion carries unanimously

XII. *Discussion Item:* Attorney General overview training – AAG Joe was asked to move the presentation to the next public session on October 29, 2021.

XIII. *Discussion Item:* Other Business - no other business. The next meeting is scheduled for October 29, 2021, at 9:00 am

Chair Liswood thanked all individuals who participated in this meeting and offered a motion to adjourn. Member Heyns-Bousliman second; roll call unanimously approved. Meeting adjourned at 12:21 pm.

Approved by:



Laura Liswood, Chair  
State Personnel Board

Attest:



Ricky A. Serna  
Acting Director