



New Mexico State Personnel Board

State Personnel Office

Michelle Lujan Grisham
Governor

Ricky A. Serna
Acting Director

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

State Personnel Board Meeting Electronic/Telephonic Meeting via ZOOM Friday, August 6, 2021 MINUTES

I. Procedural Items

- Chair Laura Liswood welcomed the group and thanked Mr. Manzagol for his public service and noted he had resigned. The State Personnel Board meeting was called to order at 9:06 a.m.
- Acting Director Serna led the Pledge of Allegiance than asked for a Moment of Reflection for the children going back to school and all who are facilitating an environment in which they can do that safely.
- Acting Director Serna introduced Cristin Heyns-Bousliman as the newest member to board. Another attorney who brings extensive experience in the field of human resources and is a Lobo graduate in management. Her legal background and human resources is a breath of fresh air to the board. Ms. Heyns-Bousliman was named to the “top 40 under 40” list by Albuquerque Business First in addition to her recognition the following year as a “Woman of Influence. Ms. Heyns-Bousliman’s employment law experience and skill set will contribute immensely to her service on the board.
- Acting Director Serna called roll - Laura Liswood, Carol Parker, David Cunningham and Cristin Heyns-Bousliman all answered present. Acting Director Serna stated a quorum is established.
- Call for Public Comment – a poll was launched on the Zoom platform and those attending on the phone were asked to unmute and state their name if they were going to make public comment. No requests received.
- *Action Item:* Approval of Agenda – Chair Liswood moved to approve the agenda as presented, Member Cunningham second. Roll call – agenda adopted unanimously.
- *Action Item:* Approval of Minutes –Chair Liswood moved to accept the minutes of the June 18, 2021, meeting as written; Member Parker second; roll call – Motion approved unanimously.

- II. *Action Item:* 2021 State Personnel Board Second Election of Officers – Chair Liswood stated since the election of vice-chair was tabled last meeting, she asked if there was a nomination. There being none, Chair Liswood asked member Cunningham if he was interested in serving in this way to which he replied yes. Chair Liswood nominated member Cunningham, member Parker second. Acting Director Serna called roll, member Cunningham unanimously approved as vice-chair.
- III. *Discussion Item:* General Public Comment – Prakash Bhakta from State Personnel Office confirmed no requests were made.
- IV. *Discussion Item:* Director's Report –
- On July 29 Governor Lujan Grisham full executed a new Collective Bargaining Agreement with CWA, a union representing 2,276 state employees across 13 agencies. This milestone comes after almost a decade of failed negotiations by the previous state administration. Acting Director Serna said thank you to the Governor's office and leadership and to our labor relations team as well as former SPO Director, Pam Coleman for her work in developing this agreement. Also, thanked Union Leadership for their work in getting this ratified.
 - On July 30, Governor Lujan Grisham issued Executive Order 2021-046. The Order requires State employees to wear masks or face coverings in accordance with the latest Public Health Order and requires State employees who are not fully vaccinated to wear a mask at all times during their employment, with limited exceptions. It also requires State employees to provide either proof of vaccination or proof of a COVID-19 test every week.
Executive Order 2021-046 also directs the State Personnel Office to provide State agencies with guidance on the implementation and administration of the Order.

On the same day, SPO issued guidance on the Order's administration and implementation. On August 3, SPO hosted an HR Council meeting to discuss the guidance and gather agency feedback.
 - The State of New Mexico 2021 Internship Program provided interns ranging from high school to graduate school with the opportunity to gain experience and insight working as a civil servant for the State of New Mexico. SPO in partnership with our Harvard Intern Ahmed Alsheikh, created a four-week program of events for interns to attend. The objectives of the four-week summer program: to support interns by creating a sense of community that allowed for meaningful connection, provide engaging career development and skill-building workshops so interns could transfer those skills into future internships or careers and coordinating various "Guest Speaker Series" so interns would have the opportunity to listen to SONM leaders share their "real world" personal career growth experiences and why they choose to work as a civil servant in state government. SPO also invited the Public Education Department sponsored interns and The Northern Area Local Workforce

Development Board interns to participate in the weekly coffee chats, workshops, and guest series programs, which will include presenting their internship experience along with SONM interns at the 2021 Summer Internship Summit offering interns the opportunity to report back their experience along with creating a highlight reel. Thank you to our staff and all those who participated.

- The Director's Office issued another round of appeal memos. SPO is working to identify General Memorandums that have been issued over the past several years. In several instances, the memos provided direction based on the financial climate at the time. Despite how long ago they have been issued, several agencies continue to follow their direction which creates conflict with rules and current practices. SPO is reviewing and repealing as necessary to clean up direction as conflicts are identified.
- SPO has executed its Return-to-Office process. We have restored public access to the Willie Ortiz building which includes the use of computer systems to apply for SoNM jobs.
- SPO team worked collaboratively with SHARE team at DoIT to implement legislative increases:
 - Front Line Worker
 - 1.5% increase
 - Corrections Department

Acting Director Serna stated his appreciation for the efforts of our staff in getting this done.

- Workforce Planning team – During June and July, processed 820 personnel actions, including the addition of 130 positions to state agencies. Recognized that level of engagement from the team.

Stand for questions –

Chair Liswood offered congratulations to former Director Pam Coleman, Acting Director Serna and the labor relations team for the extraordinary progress and result of ratification.

She asked if there had been any issues around Return to Office policy? Did he note any gender skew in this regard?

Acting Director Serna replied that Return to Office strategy which includes the COVID mitigation and screening process is now impacted by Executive Order; agencies are expected to notice non-vaccinated staff and those unwilling to provide proof of vaccination about weekly testing. Non-Mandatory Telework policy rolled out smoothly and is now a new norm for state agencies. This also give agencies the opportunity to post positions state-wide, creating opportunities and perhaps future board rules to better leverage those opportunities. We are reviewing how these opportunities intersect with staff as well as how we manage these changes.

Labor – we have been doing good at managing communication and there are always concerns about communication along the way. Misinformation can get spread unintentionally. Guidance – SPO wants to be sure everyone is on the same page.

Unions have concerns about testing requirements – using their own time, etc.
Keeping each other safe without interrupting service

Member Parker asked if there have been fluctuations in sick leave requests?
Disability requests?

Acting Director Serna stated that the Governor's Commission on Disability and accommodations that now need to exist for COVID long haul symptoms and our ability to fulfill expectations. As it relates to accommodations – mask wearing and social distance satisfy this requirement without accommodation.

Member Cunningham asked about the practical piece of the HR manager determining who is vaccinated and not. How do we recommend administering of tests?

Acting Director Serna stated the process for submitting proof of vaccination and that the Executive Order built on that for all to submit proof to HR Managers. They are reconciling those who have provided proof and will be informing non-vaccinated staff that weekly testing needs to begin. Implementation begins August 18, 2021, which is the deadline for first test then every week thereafter. HR is treating that information as confidential; supervisors are provided with verification that vaccination has occurred. For purposes of coordinating testing requirement, yes, managers will know.

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

Division Director, Leane Madrid made the presentation. She requested approval for Attorney General's office for the creation of eight (8) policy making positions. SPO acknowledging creation of these positions - two Deputy AG; one Chief General Counsel; one Chief Administrative officer; two Deputies as the Attorney General Office states these are fundamental for implementation. Each position advises Attorney General of policy making and are exempt NMSA 1978 section 10-9-M.

- Chair Liswood asked what were the positions before? Ms. Madrid stated they were all Governor Exempt prior, so they are not in classified service; already designated as exempt positions.

-Member Parker stated she had not had time to review the documents.

-Member Heyns-Bousliman had no questions.

-Member Cunningham had not yet reviewed due to the issue of receiving information 12 minutes prior to the board meeting. He stated that in his experience, these positions are usually 2 or 3 and 8 is unusual. This is a small office, 8 people making policy seems high.

-Ms. Madrid acknowledged 8 may seem high, however, when analysis was made, each position meets the definition and not all 8 positions are filled, some are vacant at this time. This will impact 6 employees currently.

-Acting Director Serna stated the evaluation is whether the position descriptions identify implementing and executing the priorities of the Attorney General at the same time, positions in our review, are consistent with GovEx appointment; the number is not high compared with other agencies. SPO assessment was made with that in mind.

- Member Cunningham stated if someone is in this position, they are serving “at will” and can be fired for political considerations; “at will” positions can be fired. It was confirmed these are “at will” positions.
- Member Cunningham state the board needs a reasonable amount of time to review.
- Chair Liswood asked if we delay the decision, are there any consequences?
- Ms. Madrid replied there are no consequence if not approved today.
- Acting Director Serna apologized for timing; SPO has been diligent in working with the AG’s office to get this completed.
- AAG Valerie Joe confirmed an action item by board must be made in an open meeting and 3-day notice needed.
- Chair Liswood motioned to table the matter to the next board meeting; member Parker second. Agenda item tabled.

VI. *Discussion Item:* Labor Relations update

Drew Lovelace, Labor Relations Administrator, provided the update.

As you may remember, the State has two Collective Bargain Agreements with Communication Workers of America, CWA and American Federation of State, County, and Municipal Employees, AFSCME. The State and the Unions have been living with the 2009-2011 CBAs in an evergreen provision status for a decade.

I am proud to report to you that for the first time since 2009 a new CBA has been negotiated, ratified, and signed with CWA. This will be a three (3) year contract. I would like to thank the State’s negotiation team, Lead Negotiator and former Director of State Personnel, Pam Coleman, former General Counsel Jeff Young, and the Director of Labor Relations Sandy Martinez for their perseverance to complete this CBA. I would also like to thank all the CWA Agency teams for their work on the supplemental addenda. To help Agencies navigate the new contract, the Labor Relations team has delivered two online training to nearly 200 attendees explaining the changes from the previous CBA. We have recorded and loaded the training on the State Personnel website for Agencies to continue to have access to the training.

Additionally, a master agreement has been tentatively agreed upon with AFSCME and the Labor Relations team continues to help the seventeen (17) organized AFSCME Agencies negotiate agency specific supplemental appendices. To date we have completed nine (9) appendices and we are hopeful to have the new contract ratified and in effect during the 4th quarter of calendar year 2021.

I stand for questions.

Chair Liswood thanked Mr. Lovelace and noted the excellent results.

Member Parker offered congratulations as did member Heyns-Bousliman.

Member Cunningham offered congratulations and asked about the 31 disciplinary appeals before arbitrator, specifically the average length of time getting to decision. He stated he was concerned about the delay.

Mr. Lovelace stated that the number has gone up over the past 18 months. Arbitrators schedule at their discretion; Member Cunningham asked what is the oldest one and Mr. Lovelace stated 2018 with a handful from 2019.

Sandy Martinez, Labor Relations Division Director stated they may have delays due to rescheduling during the pandemic. There was no Zoom at first, they were in person only. Now they know Zoom is effective, so this will likely move things along more quickly.

Member Cunningham asked if there were rules for timing; new CWA timeline – arbitrator to provide a ruling. No dates for scheduling deadline. Window for ruling, but no date for parties to get to a hearing.

Member Cunningham commented a delay in reaching decisions on HR issues only gets worse for the employee and manager; delay is never good. Expedite as fast as possible; 4-6 months is enough time to get these done. May want to recommend a schedule.

Chair Liswood asked Mr. Lovelace to provide the board a list of arbitrations in the pipeline beyond 4–6-month timeline with an explanation? She asked for this twice per year

Mr. Lovelace stated they will be able to do that.

Chair Liswood asked Board Administrator, Denise Forlizzi to add to agenda for the next meeting.

Acting Director Serna asked what SPO can provide to speed the process along. Where from a leadership standpoint can we effect change for arbitrations to be resolved quickly.

VII. *Action Item:* Discussion on future board meeting format and remaining dates for 2021. Next Meeting is currently scheduled for Friday, September 17, 2021

Acting Director Serna opened the discussion and suggested, with the current guidance, that the Board would meet in person in Santa Fe. We would also provide a virtual platform which for the public, which would expand access and participation possibilities. We would work with staff to provide the best option available: in-person, virtual or hybrid. He deferred to CIO Prakash Bhakta regarding hybrid options which would allow public comment, may need a small technology purchase.

Prakash Bhakta is looking into tech solutions; we can look at options to minimize disruption and have compliance measures in place. For hybrid, a small IT purchase would be required for trial and test.

Member Cunningham mentioned an issue with open meetings act being hybrid; can we do that based on Governor's order?

AAG Joe replied that the Open Meetings Act prefers in-person meetings and does allow for telephonic participation, provision related to COVID for public health. Hybrid approach is allowed as long as public can participate meaningfully. Staff states there are means for public to participate remotely, no provision is currently restrictive.

Member Cunningham offered a motion for a hybrid format.

Member Parker stated without wishing to invade privacy from a public health standpoint now, think it's wise for us to limit in-person meeting to board members with masks; not support public meeting beyond board members and support staff only.

Member Heyns-Bousliman agreed with hybrid model with the ability for the public to have access

Acting Director Serna agreed that public access is improved via virtual model.

Chair Liswood asked Mr. Bhakta about purchasing additional equipment. What was the cost of the experiment? Mr. Bhakta stated it was a software purchase only, trials and tests will need to be made. Investment is worthwhile and maintain compliance while leveraging available technology

Member Cunningham – motion to adopt hybrid model for the next board meeting.

Chair Liswood conditioned upon AAG Joe's assurance that this meets the standards of Open Meetings Act. Suggest in person to board members and small support staff for now. Member Heyns-Bousliman second as amended.

Roll call – motion passes unanimously.

Chair Liswood appreciates expanded access to the public.

VIII. *Discussion Item: Adjudication Litigation Update*

Janelle Haught presented the update

Adjudication has 6 new cases and has disposed of 5 which leaves 54 cases pending

Member Cunningham – does board or SPO have the ability to set timetables? Ms. Haught stated the rules don't provide for timelines. While we strive to be timely, it is difficult for agencies and employees when matters stay open.

Member Cunningham asked if board/agency creates timelines, and if not, why couldn't we do that?

Ms. Haught she is mindful of Consequence of not meeting the timelines.

Ms. Haught gave a review of each new pending case.

Member Cunningham asked what are the overall AG cases.

Ms. Haught gave some history - in 2016 the current AG, Hector Balderas was elected. Many employees were terminated, dismissed as they were "at will" employees. In September 2020 a court ruled dismissed parties should be reinstated.

Member Parker asked if Ms. Haught will give more information for timelines and explanation of why the appeals are taking so long.

Ms. Haught will coordinate the information and stated the appeals they handle are not the drivers of delays in any of the cases but results of the parties. Ms. Haught will get data for board.

Member Cunningham stated we want to make decisions so we don't get appealed. What's the appellate issue in the other 3 cases?

Ms. Haught gave an overview of 2 of the 3 cases and stated she will be prepared to discuss the 4th case at next board meeting.

IX. Executive Session

Chair Liswood made a motion to enter Executive Session; Member Cunningham second – roll call motion carried. 10:23 off the record.

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

1. *Arrey v. NM Children, Youth & Families Department*; Docket No. 20-022

2. *Madrid v. NM Department of Health*; Docket No. 19-051

Chair Liswood stated the board is back in session – the time is 11:25

- X. *Action Item: Motion for Administrative Appeals –*
Arrey matter - Member Parker *read the* recommendation that board adopt ALJ with the following modifications

Chair Liswood clarified:

1. Removing the word *not*, so it reads, "Ms. Arrey did engage in the misconduct as alleged in the NFA." *and*
6. Added language after "The Appellee's three-day suspension of Ms. Arrey was not appropriate, and Appellee shall reduce the discipline to a written warning to be placed in the Appellant's personnel file at CYFD."

Valerie Joe confirmed the modifications. Chair Liswood motion to adopt with those modifications. Member Cunningham second; roll call motion unanimously adopted.

Madrid matter - Member Heyns-Bousliman made a motion to adopt ALJ recommendations, member Cunningham second Roll call – unanimously adopted

- XI. *Discussion Item: Other Business*

No other business, the next board meeting will be Friday, September 17 at 9:00 a.m. Member Cunningham motion to adjourn Member Heyns-Bousliman second. Roll call – unanimously adopted

Chair Liswood gave a thank you from board to SPO office members who have participated in the meeting - you a did a good job in getting the board prepared.
Meeting adjourned at 11:32 am

Approved by:



Laura Liswood, Board Chair
State Personnel Board

Attest:



Ricky A. Serna
Acting Director