

New Mexico State Personnel Board

State Personnel Office



Ricky A. Serna
Acting Director

Michelle Lujan Grisham
Governor

State Personnel Board
Laura A. Liswood, Vice Chair
Jerry Manzagol, Member
Carol A. Parker, Member
David F. Cunningham, Member

State Personnel Board Meeting Electronic/Telephonic Meeting via ZOOM Friday, June 18, 2021 MINUTES

- I. Procedural Items
 - Call to Order – Vice Chair Liswood introduced herself and thanked former Chair, Christine Romero, for her years of dedicated service to the State of New Mexico. Pursuant to Sec 4 B 2021 operating procedures, Vice Chair shall preside over a meeting if there is no chair. Vice Chair Liswood called the meeting to order at 9:07 a.m.
 - Pledge of Allegiance – Acting Director Serna led the Pledge of Allegiance followed by a Moment of Silence
 - New Board Member Introduction - Acting Director Serna welcomed and introduced two newly appointed board members, Carol Parker, and David Cunningham. Each gave a brief introduction and background.
 - Acting Director Serna called roll – Vice Chair Liswood present; Member Parker, present; Member Cunningham, present; Member Manzagol, absent. Quorum established
 - Call for Public Comment – audience members were polled electronically and individually by phone number. One person requested public comment.
 - Vice Chair Liswood made a motion to accept the agenda for today’s meeting; Member Cunningham second. Roll call. Agenda unanimously adopted
 - Approval of Minutes for May 11, 2021 – Vice Chair Liswood made a motion to adopt the minutes as written; Member Cunningham second; roll call. Unanimously adopted.
- II. 2021 State Personnel Board Second Election of Officers – Vice Chair Liswood called for nominations for the vacant chair position. Member Cunningham nominated Laura Liswood; Member Parker second. Chair position filled by Laura Liswood. Chair Liswood motioned to table a vote for Vice Chair; Member Cunningham second. Roll call – motion carried.
- III. General Public Comment – Chair Liswood called on the person asking to make public comment. Sam Chavez AFSCME Unit 18 offered the following comment regarding State Personnel Office’s Administrative Law Judge recusing themselves in the middle of the hearing. Gives appellant an unfair advantage in the appeals process. If the board can do anything to get ALJ back on the case to give appellant fair process.

- IV. Director's Report – Acting Director Serna gave the following report:
- Return to Office strategy as the state is approaching vaccination goals. On June 9, State Personnel office released guidance to all agencies with two policies at the center of the strategy. The first being COVID Mitigation and Self-Screening which sets expectations for in-office mitigation measures and has provisions when vaccination status can be requested. This is meant to provide guidance for how state employees conduct themselves. The second a Non-Mandatory Telework Policy - whereby agencies can determine which position lends themselves to a telework assignment. It also describes telework as an alternative, not an entitlement or benefit. This strategy gives agencies the flexibility to determine those positions. Agencies are in the process of estimating a notice period that will allow enough time to process telework requests.
- Summer Internships - The State Personnel Office has opened its Summer 2021 Internship Program. We now have more than a dozen positions available on the SPO Careers page. We have also entered a partnership with the Northern Area Local Workforce Development Board provide students with an alternative to interning with a state agency. To date, agencies have requested more than 25 positions be filled with the assistance of the Northern Board. The Board will utilize their Workforce Innovation and Opportunity Funding to hire interns and with the help of SPO, they will be deployed to agencies that have made requests.
- Union negotiations. Shout out to Labor Relations team – they have assisted with completing negotiations between CWA and relevant agencies. We expect CWA will move to ratify the CBA in early July. The team has already begun trainings for agencies on language revisions. We continue to work with AFSCME on negotiations with their relevant agencies. It's been a pleasure working with both Unions.
- Recruitment Exemptions - Thank You to all those who helped in the recruitment exemption process. Comp & Class, Workforce Planning and Recruiting all teamed up to process several actions that had been in a holding pattern for months.
- Stand for Questions- Chair Liswood asked about the intern program specifically how we insure a broad representation. Acting Director Serna stated that we require all agencies follow the open recruitment process. We are posting opportunities on the State Personnel website and working with state agencies to establish a transparent process. One requirement to participate is that each agency provide a dedicated mentor, so interns receive a meaningful summer assignment. Northern Workforce Development Board also opened intern opportunities to people across the state. The established an open recruitment process. Because of our ongoing relationship with Harvard's Kennedy School of Government, we brought on our own intern, Ahmed Alsheikh for 10 weeks and he is organizing and leading the summer intern program.
- V. FY22 General Classified Salary Structure Adjustment – Cliff McNary, Compensation and Classification manager, gave a brief presentation on salary structure adjustment of 1.5%. Last structure adjustment was 2008. Adjust the structures by the amount approved by legislature. Effective July 1, 2021. Chair Liswood motion to accept the adjustment; Member Parker second. Roll call. Motion passed unanimously.

- VI. Consideration of Governor Request: Payout of 2020 Annual Leave Balance in Excess of 240 Hours – Acting Director Serna presented the June 14, 2021, letter from Governor Lujan-Grisham requesting compensating employees for the excess of 240 hours up to 80 of unused annual leave. Context: Deadline for using annual leave accrued over 240 hours in a calendar year. In 2020, the board extended the date to use excess leave to July 9, 2021, only to for agencies to recognize an all-hands-on-deck situation in light of the pandemic. Many did not take time off due to their responsibilities. The Governor’s request carried forward this leave at end of 2020. If approved, DFA will pay out up to 80 hours of unused leave from 2020 on June 25, 2021. Employees have the option to opt out if they have hours available, they plan to use by July 9, 2021. Based on current information, the payout will impact 810 employees with a total payout of \$850,285.36. DFA has already identified that every agency has sufficient budge for this payout.
- Stand for Question - Member Cunningham asked how we came up with 80 as the maximum number of hours? Acting Director Serna stated that the request from the Governor’s office took into consideration the financial impact and endeavored to limit that for each agency. Chair Liswood asked if there were other options to resolve this? Another extension perhaps? Acting Director Serna replied they considered other options and throughout the process, employees continue to accrue leave. The hours from 2020 were carried over. By extending the date, you compound the issue and the ability to take the additional accrued leave. Agencies have been informed along the way of those who carried forward balances and employees were encouraged to take the leave. Many employees were committed to provide services to stakeholders. On July 10, 2021, excess leave balances that are not paid out will disappear.
- Chair Liswood offered a motioned to approve the Governor’s request, Member Cunningham second. Before the roll call, Acting Director Serna asked for an amendment to the motion to allow for an opt-out by an employee to ensure we do not effectively reduce the time for those who may want to use excess leave before July 9, 2021. He asked for an amendment that 2020 annual leave as of June 25, 2021, for up to 80 of their unused hours for the pay period ending June 25, 2021, may opt-out of payout. Member Cunningham asked about an opt-out, not the entire leave, but asked for a clarified motion. Agreed – Acting Director Serna offered an amended motion that Classified and Governor Exempt employees who have not used all of 2020 annual leave with a balance up to 80 hours an employee may opt out of the payout - and if they opt-out, they will not be paid for the leave, and they may use it by July 9, 2021. Accept amendment in the manner described.
- Board Counsel Sanchez reminded the board that Acting Director Serna cannot make the motion to accept the amendment in the manner described. Char Liswood revised her motion to accept the request by the Governor with the amended opt-out provision as ready by Acting Director Serna. Member Cunningham second the amended – roll call - unanimously approved as amended.

VII. Executive Session –

Chair Liswood motion to enter Executive Session Member Cunningham second - roll call – motion carried unanimously 9:46 to closed session. Off the record.

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

Esquibel v. NM Children, Youth & Families Department; Docket No. 19-023

Chair Liswood declared the board back in open session at 10:13

Member Cunningham made a motion for the Esquibel matter discussed during closed session to Adopt the ALJ recommended decision. Member Parker second. Roll call – unanimously approved

VIII. Adjudication Litigation Update – Janelle Haught. Adjudication gave the following report: In the past four months (February, March, April, and May), Adjudication received 11 new appeals and disposed of six. There are currently 52 appeals pending.

Update - On May 11, 2021, in *Cordova vs. NMCD*; Docket No. 20-005, the Board adopted this ALJ's Recommended Decision, which overturned a termination and reinstated the Appellant, instead issuing a 3-day suspension. On June 11, 2021, the New Mexico Corrections Department filed an appeal with the First Judicial District Court.

I stand ready for any questions. The board members had no questions

IX. Public Hearing for Proposed Changes to Board Rules

Acting in her capacity of Hearing Officer, Chair Liswood called the meeting to order at 10:16 am June 18, 2021, on the Zoom virtual platform and stated this meeting is being recorded and will be admitted into the hearing record. Chair Liswood asked each board member to identify themselves for the record David Cunningham and Carol Parker identified as present. Public Notice was published as required.

For the record, certain members of the State Personnel Office are also attending to provide support including Acting Director, Ricky Serna who is also secretary to the board; Board Administrator, Denise Forlizzi, CIO, Prakash Bhakta, Compensation & Classification analyst, Melanie Morgan and Assistant Attorney General, Robert Sanchez. Participants names will be captured during this meeting and will be entered into the record as an exhibit. Confirmed General Counsel, Jessica Cooper was present. Guidelines for making public comment were read for those in attendance. Identify your name and have 2 minutes to make your comment. Ms. Morgan captured the list of attendees for the record.

Acting Director Serna named each exhibit item:

Exhibit 1: New Mexico Register notice of rulemaking

Exhibit 2: Albuquerque Journal legal notice

Exhibit 3: Notice of Rule Hearing published on the Sunshine Portal

Exhibit 4: Notice of Rule hearing on SPO website

Exhibit 5: Proposed amendments to board rule 1.7.1 NMAC – General Provisions

Exhibit 6: Proposed repeal/replacement and amendments 1.7.4 - Pay

Exhibit 7: Proposed amendments to 1.7.7 NMAC – Leave

Exhibit 8: Memorandum from Board Administrator, Denise Forlizzi indicating the State Personnel Office received no public comment to proposed changes 1.7.1, 1.7.4 or 1.7.7 during the 30-day public comment period.

Acting Director Serna asks that exhibits 1 – 8 be admitted into the record.

Chair Liswood asked if there were any questions about the exhibits from board members. Being no questions, Chair Liswood hereby admitted exhibits 1 – 8 into the record.

Chair Liswood indicated those interested in making public comment would be able to do so for each proposed rule change only when recognized and will have 2 minutes for such comment. Members of the audience will be allowed to ask questions of the commentor and will have 2 minutes to do that.

Part 1 – Acting Director Serna read the summary of the proposed rule change to 1.7.1 NMAC. One amendment to General provisions. 1.7.1.7 – clarifies definition of “pay band.”

Poll 1 launched for public comment. One person requested comment, Ms. Morgan asked the requestor to please unmute and state your name. Sam Chavez commented for 2 minutes. Mr. Chavez thanked the board for changes they are considering. Some of the changes made were the result of bargaining with AFSCME. Would like the record to reflect that. No questions of commentor.

Part 2 – Acting Director Serna read the summary of 1.7.4 NMAC.

Poll 2 launched for public comment. One person requested comment. Sam Chavez AFSCME Chapter 18 identified himself. Comment on rule change on differential pay. Some of the in contract with state, we do have differential pay, if changed it would affect the contracts already in place. Please do not make the changes. The contract states the department has the right to not pay. In contract, it says it will pay.

Member Cunningham asked Acting Director Serna to reply to the commentor. Acting Director Serna confirmed Mr. Chavez was referring to 1.7.4.13 Pay Differential subsection on dusk-to-dawn payment. Added language stipulates if an employee requests an alternative work schedule which when approved, results in working dusk-to-dawn (6 pm – 7 am), an agency may choose not to pay differential since the employee requested that change.

Member Cunningham asked General Counsel, Jessica Cooper if there a conflict between the contract and the proposed rule change. Ms. Cooper relayed that Labor Relations Director Sandy Martinez is reviewing the language and will have the verbiage available for discussion prior to voting. Poll launched for questions of commentor. No questions.

Current language 1.7.4.13 – if an employee requests an Alternate Work Schedule, Agency may choose to not pay the Dusk-Dawn differential.

Part 3 - Acting Director Serna read the summary of 1.7.7 NMAC – Absence and Leave

Poll 3 launched for public comment. One person requested comment. Sam Chavez AFSCME Chapter 18 identified himself. Rule change regarding admin leave. Administrative Leave is in AFSCME contract for state employees if you take away admin leave for hearings, it. Will affect

the AFSCME bargaining units because the contract states employees will be granted admin leave for union hearings and actions.

Questions about the comment - No questions from board.

Any questions for the commentor. One person who would like to question the commentor Jessica Cooper, General Counsel for State Personnel Office asked Mr. Chavez to please specify for the board provisions of CBA the rule conflicts with

Mr. Chavez indicated Articles 9, 14 and appendix 8 of the CBA; Ms. Cooper asked Mr. Chavez to identify the specific article that addressed leave for hearings and actions. Mr. Chavez could not easily identify the specifics. Chair Liswood asked Ms. Cooper for guidance and Ms. Cooper deferred to Board Counsel Sanchez who advised to give full due process to the commentor. He indicated Chair Liswood could call for a recess so Mr. Chavez could locate specific provisions as he is entitled to an informed decision.

Ms. Cooper asked Mr. Chavez how much time he would need to find the references to both Admin Leave and dusk-to-dawn

Mr. Chavez asked for 10 minutes for the admin leave and asked for 5 minutes for dusk-to-dawn. Chair Liswood allowed a 10-minute recess in the hearing 10- minutes granted.

Recessing public hearing at to find pertinent contractual provisions identified.

Chair Liswood granted the recess, we are off the record at 10:52 and will reconvene at 11:02.

Mr. Bhakta asked that board members turn on their audio and video, meeting is reconvened at 11:02 am and back on the record. Chair Liswood asked Mr. Chavez to please respond to the questions. Mr. Chavez responded that the question on annual leave; Article 9 specifies Leave Without Pay and is it the same as admin leave. Doesn't know if this will affect the members. Looking at the appendix as well. Mr. Chavez 2-minute time allowance was up before he found additional information.

Poll launched to determine if there were questions for the commentor. No questions.

No further comments.

Chair Liswood asked Ms. Morgan if she had an attendance sheet for the public hearing and Ms. Morgan said she did. Attendance sheet will be marked Exhibit 9 and entered into the record. Public comments will be considered and discussed by the board immediately following this hearing. If you would like a copy of the Concise Explanator Statements, please email

DeniseM.Forlizzi@state.nm.us

Public Rule Hearing was adjourned 11:06 a.m.

Chair Liswood thanked everyone for their time and public comments

X. Discussion and Potential Adoption of Rule Changes

Chair Liswood stated we are back in general session

1.7.1 NMAC - Any discussion to the proposed rule change

No comment or amendments from Members Cunningham or Parker.

Member Cunningham moved to adopt as 1.7.1 as written; Member Parker second.

Acting Director Serna called roll, motion unanimously adopted. Chair Liswood asked Acting Director Serna to please make sure this is published in New Mexico Register as required by law.

1.7.4 NMAC Any comments or proposed amendments to part 2 - Pay?

Member Parker had a question for Ms. Cooper. Did we find a conflict regarding differential pay being approved at the discretion of an agency on dusk-to dawn pay when that schedule was requested? General Counsel Cooper was not able to locate any conflicting information in the CBA and Mr. Chavez was not able to provide any data. In her opinion there is no conflict. No amendments Chair Liswood would entertain a motion to adopt as written. Mr. Chavez unmuted himself to state that he did not have the opportunity to provide information on administrative leave and the differential.

Ms. Cooper asked Mr. Chavez if he had identified a provision for the dusk-to-dawn differential. Appendix C correction officers it acknowledges admin leave and differential in Article 34, appendix C; under health and safety #4 acknowledging admin leave; appendix C on page 121 when it goes to regular shifts.

Acting Director Serna Section read Article 34, Appendix C. Chair Liswood asked General Counsel Cooper if this applied to the proposed rule change. She stated there is no connection with the proposed rule change as what was read is a very different definition.

Member Cunningham moved to adopt 1.7.4 NMAC as written Member Parker second Roll call motion passed and adopted unanimously. Chair Liswood asked Acting Director Serna to please make sure this is published in New Mexico Register as required by law.

1.7.7 NMAC – is there any discussion or amendments? None from board members.

Chair Liswood asked for a motion to adopt as written, so moved by Member Cunningham and Member Parker second. Acting Director Serna took roll call - motion unanimously adopted. Chair Liswood asked Acting Director Serna to please make sure this is published in New Mexico Register as required by law.

- XI. Other business – The next meeting is scheduled for Friday, August 6, 2021. General assessment about virtual, in-person or hybrid. Member Cunningham stated he will be out of town, so virtual will work. Member Parker can do either, if it works better for Mr. Cunningham, she is fine with virtual. Chair Liswood stated we can discuss and asked Acting Director Serna to outline the health and safety guidelines for an in-person meeting. He stated that mask wearing would be required in common areas and social distancing in the auditorium meeting space.

Motion to adjourn made by Member Cunningham; Member Parker second

Roll call – Chair Liswood thanked the new board members for their active engagement and those attending for their participation and being concerned about the issues discussed.

Meeting adjourned at 11:19 a.m.

Approved by:



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

Attest:



**Ricky A. Serna
Acting Director**