

## **MINUTES OF THE STATE PERSONNEL BOARD**

**October 20, 2005**

**Charleston, West Virginia**

The State Personnel Board met on October 20, 2005 at 2:00 p.m. to conduct business and to consider other administrative matters. Present at the meeting were Board members Robert Ferguson, Jr., Chairman, Eugene Stump and Elizabeth D. Walker. Member Sharon Lynch participated by telephone. Others in attendance were: Willard M. (Max) Farley, Acting Director of the Division of Personnel; Assistant Directors Tim Basford and Evelyn Davis; and, Shelly Lowery, Secretary to the Board.

### **APPROVAL OF MINUTES**

The minutes of the September 15, 2005 meeting had been sent to the members of the Board prior to the meeting. Chairman Ferguson asked for any additions or corrections. There being none, Mr. Stump moved the minutes be accepted. Ms. Walker seconded the motion. The September 15, 2005 minutes were approved by unanimous consent.

### **CONSIDERATION OF PROPOSALS**

#### **DEPARTMENT OF COMMERCE**

##### **Division of Forestry**

The State Personnel Board approved a request by the Division of Forestry to withdraw proposal #2331 from consideration for further study.

#### **BECKLEY-RALEIGH COUNTY HEALTH DEPARTMENT**

Upon motion of Mr. Stump, seconded by Ms. Walker, the State Personnel Board approved proposal #2332, implementing a one time, non-base-building payment of \$1,000 for eligible employees of the Beckley-Raleigh County Health Department in accordance with Section 5.4 (f)(4) (Pay Differentials) of the Division of Personnel *Administrative Rule*. The payment is subject to the restrictions and conditions noted in the proposal and is effective no later than October 31, 2005. Max Farley, Acting Director of the Division of Personnel presented the proposal.

#### **DEPARTMENT OF ADMINISTRATION**

##### **Finance Division**

Upon motion of Ms. Walker, seconded by Mr. Stump, the State Personnel Board approved proposal #2333 exempting the position of Director, Finance Division from the classified service under West Virginia Code §29-6-4(c)(7) as policymaking. Chairman Ferguson noted that the position was currently vacant. Tim Basford, Assistant Director of Classification and Compensation, presented the proposal.

### **OTHER BUSINESS**

#### **Revision - Annual Increment (DOP-P5)**

Upon motion of Ms. Walker, seconded by Mr. Stump, the State Personnel Board approved a revision of the *Annual Increment Policy* (DOP-P5) in accordance with the West Virginia Supreme Court's decision in *Canfield, et al v. WV Division of Corrections* (No. 32287). The substantive revisions include the following:

- Revised definition of "years of service" to reflect that an employee electing to receive temporary total disability (TTD) benefits continues to accrue credit for years of service while on leave without

pay.

- Revised example for employees in no-pay status to reflect that an employee electing to receive temporary total disability (TTD) benefits continues to accrue credit for years of service while on leave without pay; and,
- Added reference to *Canfield , et al v. WV Division of Corrections* (No. 32287)(2005).

The policy revisions are effective November 1, 2005

### **Revision - Workers' Compensation/Sick Leave Policy (DOP-P7)**

Upon motion of Ms. Walker, seconded by Ms. Lynch, the State Personnel Board approved a revision of the Workers' Compensation/Sick Leave Policy (DOP-P7) in accordance with the West Virginia Supreme Court's decision in the matter of *Canfield, et al v. WV Division of Corrections* (No. 32287). The substantive revisions include the following:

- Revised the policy to reflect that employees of the State of West Virginia continue to accrue annual increment pay, years of service, and annual leave while receiving temporary total disability (TTD) benefits during absences from work due to a work related, compensable injury, but do not accrue sick leave and holidays.
- Added reference to *Canfield , et al v. WV Division of Corrections* (No. 32287)(2005).

The policy revisions are effective November 1, 2005

### **Revision - Agency Dress Codes (DOP-P3)**

Upon motion of Ms. Lynch, seconded by Ms. Walker, the State Personnel Board approved a revision of the *Agency Dress Codes Policy* (DOP-P3) to reflect the "rational governmental purpose" test established in the United States Supreme Court's decision in *Kelly v. Johnson*, 425 U.S. 238, 96 S.Ct. 1440, 47 L.Ed 2d 708 (1976), and the Education and State Employees Grievance Board's reliance on *Kelly* in *Burdette v. W. Va. Public Serv. Comm.*, Docket No. 93-PSC-132 (Nov. 16, 1993), and *M. Todd Jenkins, et al. V. DHHR/Mildred Mitchell-Bateman Hospital*, Docket No. 00-HHR-334 (Apr. 13, 2001). The Court, in *Kelly*, overturned the "close judicial scrutiny" test earlier established in *Conrad v. Goolsby*, 350 F. Supp. 713 (N.D. Miss. 1972). The substantive revisions include the following:

- Revised the policy to reflect that the provisions of agency dress codes are no longer required to survive "close judicial scrutiny," but must serve a "rational governmental purpose."
- Deleted the reference to *Conrad v. Goolsby*, 350 F. Supp. 713 (N.D. Miss. 1972).
- Added references to *Kelly v. Johnson*, 425 U.S. 238, 96 S.Ct. 1440, 47 L.Ed 2d 708 (1976), *Burdette v. W. Va. Public Service Comm.*, Docket No. 93-PSC-132 (Nov. 16, 1993), and *M. Todd Jenkins, et al. v. DHHR/Mildred Mitchell-Bateman Hospital*, Docket No. 00-HHR-334 (Apr. 13, 2001).

The policy revisions are effective November 1, 2005

### **Adoption of Organ Donation Rule**

Upon motion of Ms. Walker, seconded by Mr. Stump, the State Personnel Board approved filing a notice of adoption of the **Paid Leave for Organ Donation** interpretive rule with the Secretary of State's Office in accordance with the provisions of West Virginia Code §29A-3-1 et seq.

With no further business, Chairman Ferguson entertained the motion to adjourn the meeting. Ms. Walker moved, Mr. Stump seconded the motion. Motion carried.

### **NEXT BOARD MEETING**

The next state Personnel Board meeting is scheduled for November 17, 2005, at 2:00 p.m. in Building 6, Room B-425, State Capitol Complex, Charleston, West Virginia.

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Robert Ferguson, Jr., Chairman  
State Personnel Board

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Shelly Lowery, Secretary  
State Personnel Board