

ALASKA STATE PERSONNEL BOARD MEETING

September 19, 2013

12:00 P.M.

Bayview Building

619 East Ship Creek Avenue, Suite 309

Anchorage, Alaska

In person:

Debra English, Chairperson

Dr. Keith Hamilton, Board Member

Al Tamagni, Board Member

Nicki Neal, Secretary to the Personnel Board, Director of Personnel and Labor Relations

Nancy Sutch, Deputy Director of Personnel and Labor Relations

Bill Milks, Assistant Attorney General, Department of Law

Mark Thiessen, Associated Press

Matthew F. Smith, KTVA, CBS 11

John Thain, KTVA, CBS 11

Joshua Wilson, Alaska Correctional Officers Association (ACOA)

Christa Von Bergen, Office of Representative Reinbold

Dana Phillips, Human Resource Consultant I, DOT/PF

Tom Stenson, Alaska Civil Liberties Union (ACLU)

Glenda Kerry, Public

Doug Carson, Alaska State Employees Association (ASEA)

Joshua Banks, Office of Senator Fred Dyson

Present by teleconference:

Michelle Palmer, Division of Personnel and Labor Relations

Kim Garrett, Division of Personnel and Labor Relations

Joshua Decker, Interim Executive Director, Alaska ACLU

Alexandra Gutierrez, Alaska Public Radio Network

1. CALL TO ORDER

Chairperson English called the meeting to order at 12:00 p.m.

2. APPROVAL OF AGENDA

The agenda was moved and approved.

3. APPROVAL OF MINUTES

The minutes of the July 8, 2013 meeting were moved and approved.

4. ETHICS DISCLOSURES – PERSONNEL BOARD MEMBERS

The board members had no disclosures.

5. PROPOSED LEAVE REGULATION AMENDMENTS

Director Nicki Neal presented proposed amended leave provisions which had been tabled at the July 8, 2013 meeting in order to obtain clarification on the language used to quantify the hours of leave which equals one day. Director Neal explained that a day of leave is defined in 2 AAC 08.999(a)(1).

Board Member Tamagni asked how many hours of leave an employee can accrue in a year. Director Neal explained that there are now maximum accrual caps. Chairperson English clarified Board Member Tamagni's questions was in relation to the number of hours an employee accrues per year. Director Neal explained that the rates of accrual are based on years of service as outlined in SB 95. Employees hired on or after July 1, 2013 have a reduced leave accrual. Board Member Tamagni sought confirmation that the intent of the changes was to reduce the accrued leave liabilities; Director Neal confirmed.

PUBLIC COMMENT on 2 AAC 08.060(a), 2 AAC 08.060(h), 2 AAC 08.062, 2 AAC 08.065(a), 2 AAC 08.070(c), or 2 AAC 08.999(a)(4)
There were no public comments.

The following amendments were moved and approved:

- 2 AAC 08.060(a) – (d) is amended to increase the mandatory leave usage from five to ten days in a leave year.
- 2 AAC 08.060(h) is repealed and readopted to allow for five days of leave cashed-in to apply to an employee's mandatory leave requirement.
- 2 AAC 08.062 is added establishing a maximum accumulation limit for personal leave and providing for exemptions.
- 2 AAC 08.065(a) is amended limiting an employee to six leave cash-ins per leave year.
- 2 AAC 08.070(c) is amended to clarify that the donation of leave does not reduce the mandatory leave requirement.
- 2 AAC 08.999(a)(4) is amended to clarify that the leave year includes the 12-month period described in AS 39.20.295.

Director Neal provided the board with an updated version of proposed amendments to 2 AAC 08.050 and 2 AAC 08.999(c). She explained that minor changes were made to the original draft the board received in their meeting packet. The updated version modified language to care for the filing of affidavits within the Legislative and Judicial Branches; these branches are covered under these regulations and were not cared for in the original draft.

Director Neal then provided background on 2 AAC 08.050 and 2 AAC 08.999(c). She explained that these regulations address family and health leave. Due to a recent situation it came to the state's attention that a state employee who is in a long term committed relationship with a same-sex partner should be granted leave for a serious medical condition of that partner. This determination was made based on the 2005 Alaska Supreme Court decision in *ACLU v. State*. Criteria is necessary to determine eligibility. In 2007 the Division of Retirement and Benefits developed regulations for determining eligibility of health insurance for same-sex partners. The proposed amendments to the leave regulations are nearly identical to the Division of Retirement and Benefits regulations. Chairperson English asked what was meant by "nearly identical". Director Neal explained that the only difference is that the language referring to health benefits was removed and instead refers to family and health leave. She then briefly explained each of the proposed changes to 2 ACC 08.050. Board Member Hamilton asked what determines a serious medical condition. Director Neal provided and read the definition of serious health condition as defined in AS 39.20.500. Hamilton inquired if the 12-month criteria in the proposed regulations is the same as the 2007 decision. Director Neal clarified that the 2007 eligibility criteria set out by the Division of Retirement and Benefits is also 12 months.

PUBLIC COMMENT on 2 AAC 08.050 and 2 AAC 08.999(c)

Joshua Decker representing the ACLU expressed his appreciation that the State of Alaska is adopting regulations for same-sex partners to provide the same benefits as married couples. Mr. Decker then conveyed his concerns with the proposed language. He asserted the regulations are in violation of the Alaska Constitution as it treats same-sex partnerships differently than married couples. He further stated that the 12-month requirement seemed arbitrary and that many of the requirements, such as owning a home or having a will, would be difficult for many Alaskans to meet. He then suggested adopting regulations that allow for coverage if same-sex couples simply state they are married. Chairperson English pointed out that the regulations do not require same-sex couples to own a home given that rental agreements are also allowed under the proposed regulations. She then asked Mr. Decker if the ACLU had voiced opposition to the requirements the Division of Retirement and Benefits had adopted in 2007 for same-sex partner health insurance benefits. Mr. Decker responded that there have been no court cases involving the Retirement and Benefit regulations.

Board Member Hamilton asked about the role of the Personnel Board in regards to same-sex partner benefits and the criterion lined out in the proposed regulations. Assistant Attorney General (AAG) Milks clarified that the Personnel Board's role is to review the proposed criterion before them and determine if they are to be adopted. Board Member Hamilton sought confirmation that the Attorney General has already determined that same-sex partners should receive these leave benefits. AAG Milks confirmed and stated that the Department of Law's determination was based on the 2005 Alaska Supreme Court decision.

PUBLIC COMMENT CONTINUED

Director Neal presented the board with written public comment submitted by Representative Lora Reinbold requesting that the Personnel Board delay its decision on 2 AAC 08.050 and 2 AAC 08.999(c) until the legislature convened.

Board Member Hamilton asked for AAG Milks' comments regarding the request of Representative Reinbold. AAG Milks responded that the Department of Law has looked at the draft regulations and reviewed all public comments; the Department of Law's view is that the draft regulations are consistent with the law and requirements of *ACLU v State*. Chairperson English sought clarification regarding if Rep. Reinbold was aware of the Alaska Supreme Court's 2005 decision. AAG Milks responded that he was not able to comment on that, other than to say that the Department of Law has reviewed all public comments including Rep. Reinbold's and that the Alaska Supreme Court is the basis for the decision. Board Member Hamilton asked for clarification regarding Rep. Reinbold's request to delay the Personnel Board's decision. Director Neal noted that the legislature is not involved in the leave regulation adoption process as they relate to the internal management of the Executive Branch. Chairperson English asked for confirmation that the legislature is not part of the process and asked AAG Milks for legal counsel regarding Rep. Reinbold's request. AAG Milks reiterated that the Department of Law has reviewed the proposed regulations and all public comments and feel the proposed regulations are consistent with the law.

Director Neal then provided the board with all remaining written public comments.

EXECUTIVE SESSION UNDER AS 44.62.310

The board went into executive session at the request of Board Member Hamilton at 12:35 p.m. to seek guidance from legal counsel on Rep. Reinbold's request to delay board action.

The board returned from executive session at 12:51 p.m.

PROPOSED PERSONNEL AND LEAVE REGULATION AMENDMENTS CONTINUED

Director Neal briefly described the proposed changes to 2 AAC 08.999(c) which defines immediate family for purposes of using medical leave. Board Member Hamilton asked if this definition was the same as the Retirement and Benefits regulations. Director Neal clarified that as this regulation specifically addresses medical leave it is therefore not based on the Retirement and Benefits regulation. Chairperson English asked if any briefings relating to the 2005 court case outlined the requirements of the decisions. AAG Milks responded that he could not recall if there were any briefings regarding that but the result of that case was the regulations that were adopted by Retirement and Benefits. Chairperson English then asked if there have been any court cases challenging the eligibility criteria

laid out by Retirement and Benefits. AAG Milks stated that there have been no legal challenges since the criteria went into effect in 2007.

The amendment to 2 AAC 08.050 was moved and approved unanimously:

- 2 AAC 08.050 is amended by adding a new subsection to provide that state employees eligible for family and health leave under AS 39.20.305 may take leave due to a serious health condition of a same-sex partner if the employee and same-sex partner meet certain requirements.

The amendment to 2 AAC 08.999(c) moved and approved; Board Member Hamilton was in opposition:

- 2 AAC 08.999(c) is amended to include same-sex partners in the definition of immediate family.

6. REVIEW OF QUARTERLY ETHICS REPORTS

There were no quarterly ethics reports for review.

7. REVIEW OF ETHICS CASE LOG

There were no questions on the monthly ethics reports.

8. EXECUTIVE SESSION UNDER AS 44.62.310

No further executive session was needed.

9. UPDATE FROM THE DIRECTOR OF PERSONNEL & LABOR RELATIONS

Director Nicki Neal reported:

- The new recruitment system, NEOGOV, has functioned well since its implementation in March.
- Once finalized, the Segal Company's review of the classification system and pay plans will be provided to board members.
- Contract negotiations will begin soon for PSEA, AVTECTA, and the 3 marine units.

10. OTHER MATTERS THAT MAY COME BEFORE THE BOARD

The next meeting was tentatively set for January 2014.

11. ADJOURNMENT

The meeting adjourned at 1:05 p.m.