

ALASKA STATE PERSONNEL BOARD MEETING

February 12, 2024

4:00 P.M.

Atwood Building

550 W 7th Avenue, Suite 1970

Anchorage, Alaska

In person:

- Al Tamagni, Chairperson
- Dr. Keith Hamilton, Board Member
- Donald Handeland, Board Member
- Camille Brill, Human Resource Consultant 6, Division of Personnel & Labor Relations (DOPLR), on behalf of Kate Sheehan, Personnel Director and Board Secretary
- Jackie Graffin-Bray, Member of the Public

Present by telephone:

- Jessie Alloway, Chief Assistant Attorney General, Department of Law
- Matt Stinson, Assistant Attorney General, Department of Law
- Andy Miller, Assistant Attorney General, Department of Law
- Jeff Hahnen, Human Resource Consultant 2, DOPLR
- Jay Ribao, Human Resource Consultant, DOPLR
- Andrée McLeod, Member of the Public

1. CALL TO ORDER

Chairperson Tamagni called the meeting to order at 4:00 p.m.

2. APPROVAL OF AGENDA

The agenda was moved and approved.

3. APPROVAL OF MINUTES

The minutes of the November 15, 2023, meeting was moved and approved.

4. ETHICS DISCLOSURE – PERSONNEL BOARD MEMBERS

The board members had no disclosures or conflicts of interest of which that they were aware.

5. DEPARTMENT OF LAW PRESENTATION, THE STATE OF ALASKA PERSONNEL BOARD'S AUTHORITIES, DUTIES, AND RESPONSIBILITIES.

Andrée McLeod asked for a copy of the handouts for the Department of Law presentation and Camille Brill promised to email them to her after the meeting.

Andy Miller introduced himself as the Assistant Attorney General who handles employment and labor law issues for the State. He gave a brief history of his professional career.

AAG Miller reviewed four key duties of board during his presentation:

- He explained the Personnel Board's legal authority is established under Alaska Statute 39.25.030, which states, "There is established within the Department of Administration a division of personnel. There is established within the division of personnel a personnel board." The duties, responsibilities, and authority for the board are elsewhere in statute, all of which fall under the Personnel Act. AS 39.25.060 states that the board will be composed of three members that are appointed by the Governor and confirmed by the legislature to six-year terms. Board members may not be state employees and only two members of the board may be part of the same political party.
- The board's powers and duties are established under AS.39.25.070, which is to amend the Personnel Rules when needed; to move positions between the classified and [partially] exempt service, and vice versa; to hear appeals of certain employment actions from classified employees such as demotions, lengthy suspensions, and dismissals; and to carry out various duties under the Executive Branch Ethics Act, including those related to complaints of ethics violations by state officials.
- The authority and procedure allowing the board to amending the Personnel Rules is AS.39.25.140. The Director of Personnel prepares and submits amendments to the Personnel Rules to the Commissioner of Administration, who then reviews and submits them to the Personnel Board. The Secretary of the Board must provide 30 days public notice of any proposed action to amend the Personnel Rules; and they may, if requested, hold a public hearing on the amendments. The board will then vote to amend the change in the rules, and if they are amended, they would be published in the Alaska Administrative Register and Code, which is where the Personnel Rules are. The Personnel Rules are different then the Personnel Act. The act is in the statute and can only be amended through a vote of the legislature, and the rules are regulations that are amended by the Personnel Board. The Department of Law assists with drafting these types of amendments.
- The board may approve to move positions from the partially exempt to the classified service, or the opposite direction from the classified to partially exempt service. Statute allows the board, upon written recommendation from of the Commissioner of Administration, to extend the partially exempt service to include any position that is in the classified service that has been determined to involve a principal responsibility of determining policy or the way policy is carried out. Discussion ensued about the

classified, exempt, and partially exempt positions. Deputy Director Brill explained that there is the classified service, which is like civil service. Then there is exempt service, which would include positions such as cabinet members, staff in the Governor's Office, and political appointees. Finally, there is the partially exempt service. These positions are partially exempt from some of the State Personnel Act provisions while others apply. The classification and pay plans are applicable to partially exempt positions.

- AAG Miller explained the board may have hearings for appeals of certain employment actions. Hearings are rare because there are very few employees to whom this provision applies. AAG Miller stated his understanding is the provision applies to employees at the Alaska Labor Relation Agency, who are in classified positions not represented by a union. There are also a few dozen college and high school intern positions that would be covered. In these cases, the board may vote to provide back pay and reinstate the employee if it finds the action was taken for political, racial, or religious reasons, or in violation of the Personnel Rules in some way. State employees, who are also members of the organized militia or National Guard, also have certain hearing rights before the board.
- The board has a duty to carry out certain functions of the Ethics Act. AAG Miller said the state's ethics attorney (AAG Matt Stinson, who was present) may be better at answering any of the board's questions. The board reviews quarterly ethics reports, in which state employees disclose possible conflicts of interest such as a second job, improper gifts, and misuse of official capacity. They are reviewed by the Department of Law before they are passed on to the board. AAG Stinson explained that the board receives copies of the quarterly ethic reports, and if there are questions or concerns, they can be addressed in executive session.
- AAG Miller stated that the second responsibility of the board under the Ethics Act is to hear the ethics complaints and issue rulings. The Personnel Board retains independent counsel to act in place of the Attorney General's Office to review the complaint and to further review if there are violations of the law. Then, depending on if there is, there can be a hearing for the violation and the board has authority to order and impose penalties under the ethics act for violations against the act. Discussion ensued about process. AAG Stinson stated that his office handles the intake for ethics complaints, and if the ethics complaint refers to the Governor, Lieutenant Governor, or the Attorney General, then those are sent to the board for review; and the board would contact their counsel to assess those complaints and make determinations. For the rest of the complaints that are in reference to public officers under the Ethics Act, those go to the Attorney General's Office for initial review and investigation. In some instances, if someone is denying an accusation

after the initial investigation (if there is an accusation or allegation served), there occasionally will be a hearing, in which case the Personnel Board would appoint an administrative law judge for the hearing. At the end of the hearing, the board would make determinations about imposing appropriate sanctions. That could also happen without a hearing if someone admits there is a violation. There are instances that will come before the board to impose sanctions. For most complaints, the Attorney General's Office does the initial assessing, but that is subject to the board to review the determinations and findings.

Board Member Hamilton stated that in his tenure here, there has been one time where he read in the newspaper about an executive branch member before he heard about it as a state board member, which was distressing. Part of that was just timing with when the board meets, but the board needs to be called immediately and notified whether it's a special quick meeting and going to executive session to discuss it. Board Member Hamilton said he had heard in the past that employees had to pay out of their own pocket for attorneys for even frivolous suits against them and asked if that's accurate. AAG Stinson responded that if someone is going to hire counsel to handle their defense from ethics act complaints, then they do end up paying for that. Discussion ensued with AAG Stinson saying there are some circumstances where there can be reimbursements if someone is found not to have violated the act. Historically, if it was a complaint against the Governor, Lieutenant Governor, or Attorney General, then they would handle their legal fees in terms of representation for those proceedings, but there has been recent regulatory change. There are instances now where if it is determined to be in the public interest, then the Department of Law can give legal representation for the Attorney General, Lieutenant Governor, or Governor in terms of making filings on their behalf or proceedings for Ethics Act complaints.

- AAG Miller explained the board can establish their own rules and procedures about how meetings are run; elect their chair; administers oaths and issue subpoenas related to complaints; and have hearings when witnesses or information is needed to be obtained; and the board can employ staff as needed.

Board Member Hamilton wanted to confirm that there aren't any term limits on Personnel Board members; and AAG Miller indicated that was correct.

6. REVIEW OF QUARTERLY ETHICS REPORTS AND SUBMITTAL COMPLIANCE

Board Member Hamilton said he had a question on procedure as he knows that the Governor has proposed maybe deleting some of these commissions. He asked

“Where is that in process and does the board have any role in that?” Deputy Director Brill said she is aware of that and has read them but does not see any role for the board in that process.

Board Member Hamilton stated that it appears the biggest “offender” this time for quarterly ethics report submittals is the Permanent Fund Dividend (PFD). Chairperson Tamagni suggested imposing an automatic assessment of \$2,500 for the first time they fail to submit their ethics report or a \$5,000 assessment for the second time. Board Member Hamilton noted that there are a lot of other folks in the same boat as they are.

Discussion ensued on the procedure for submitting ethics reports. Chief AAG Jessie Alloway stated the designated ethics supervisor for each agency or board must submit their quarterly report to the Attorney General’s Office. The Attorney General’s Office completes the summary that is submitted to the board each quarter. Their paralegal is the person who currently collects the quarterly reports and is the point of contact for all boards and agencies; and she does follow up with a reminder if reports are not submitted.

7. EXECUTIVE SESSION UNDER AS 44.62.310(c)(3)

No executive session.

8. UPDATE FROM THE DIRECTOR OF PERSONNEL & LABOR RELATIONS

Deputy Director Brill spoke on behalf of Personnel Director Kate Sheehan and said the Director wants the board to be aware of Senate Bill 165. The proposed legislation seeks to add a section to AS 39.52 that would state: the Department of Law, including the Attorney General, may not represent or advise the Governor, Lieutenant Governor, or another public officer or former public officer in a matter in which that public officer, or former public officer, is the subject of a complaint filed under this chapter.

9. OTHER MATTERS THAT MAY COME BEFORE THE BOARD

Member of the public, Andrée McLeod, asked Chairperson Tamagni how long he has been on the board, to which he stated probably under four or five different governors. Ms. McLeod estimated that would be 20 years now and indicated that is a long time. Chairperson Tamagni stated that as long as the person who is older has a sharp mind, there is a lot of good knowledge over all those years, and it can be applied continuously. Chairperson Tamagni and Ms. McLeod engaged in a conversation wherein Ms. McLeod informed him that she is the Good Government Director for the Alaska Public Interest Research Group. Their conversation continued; and Chairperson Tamagni asked Ms. McLeod if she had a complaint, or anything else she would like to say. Ms. McLeod said she took offense to the question and also to the earlier reference to frivolous complaints.

She said if the board can get together and figure out the definition of a frivolous complaint, because it shows a certain bias on the Personnel Board. Chairperson Tamagni disagreed stating that this is an American expression of opinion. Ms. McLeod stated that the board should include an agenda item at its next meeting to have a definition for the word “frivolous.” Conversation continued regarding adding an agenda item. Chairperson Tamagni said that if she would put her agenda item request in writing to the board they would.

Member of the public, Jackie Graffin-Bray, asked where she can find amendments or proposed amendments to any of the rules. Deputy Director Brill responded that any time there are proposed amendments to the Personnel Rules, there is public notice of them. The same place Ms. Graffin-Bray found the notice for this meeting is where she may also find those proposed amendments.

The Board tentatively scheduled their next meeting for May 22, 2024, at 1:30 p.m.

10. ADJOURNMENT

The meeting adjourned at approximately 5:01 p.m..