CALIFORNIA STATE PERSONNEL BOARD
GRAY DAVIS, Governor
801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES**

MAY 21, 2002

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
Florence Bos, Member
Sean Harrigan, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn
(Report given by Laura Aguilera, Assistant Executive Officer)

The Board was advised of the following:

A. The Budget May, 2002, revision was issued last week. The State Personnel Board was not identified as receiving additional cuts beyond the 15 percent reduction. The May, 2002, revision eliminates an additional 4,000 state government positions which are expected to come from vacant positions and/or attrition.

**The State Personnel Board Summary Minutes can be obtained at the following Internet address:
http://www.spb.ca.gov/spbmeet/spbminrd.cfm

B. Unit 17 MOU was approved recently. It included a "Post and Bid" feature for assignment changes only.

C. Our Senate Budget Subcommittee conducted a hearing on our budget last week to discuss the Bilingual Services Program and to resolve issues connected with the funding of local Peace Officer Bill of Rights (POBR) responsibilities. The Subcommittee approved language on the Bilingual Services Program and amended the funding level for the local POBR responsibilities.

D. The State Personnel Board staff have completed the scoring of the statewide Office Technician examination held in March, 2002, and the results have been mailed out. There are over 4,800 candidates on the list.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

A. The Department of Fish and Game v. State Personnel Board (Martin Smith) - Superior court denied petition for writ of mandate challenging State Personnel Board's decision modifying a dismissal to a three month suspension. The appellant, a Fish and Game Warden had engaged in a verbal altercation with a tuxedo shop owner over late fees while on duty and in uniform.

Other:

A. The Office of Administrative Law (OAL) denied Request for Determination filed by Matthew Gauger, Esq. challenging the State Personnel Board's (SPB) Archuletta decision (SPB Dec. No. 02-01) as an underground regulation. OAL cited Government Code Section 11425.60, which provides an express statutory exemption from the Administrative Procedures Act (APA) for precedent decisions in general, and Section 19582.5, which specifically exempts the State Personnel Board's precedent decision designations from the rulemaking provisions of the APA, as authority for its ruling.

B. On a related note, the State Personnel Board's Chief Counsel's Office is working on putting together a notice for the California Regulatory Notice Register that an index of precedent decisions is available by subscription.

C. Notices of changes to the proposed regulations on Discovery in Non-Adverse actions and Whistleblower actions have been issued, with the period for public comment expiring June 3, 2002.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

A. State Personnel Board sponsored bills, AB 1950 (Wright) State employment - Extension of probation period for reasonable accommodation and SB 1503 (Ackerman) amends the statute of limitations for filing actions arising from decisions of the State Personnel Board, have passed out of their house of origin.

B. Karen Brandt, Staff Counsel and Judy Balmain, Director of Legislation of the State Personnel Board will be meeting with the California State Employees Association to discuss the Board's opposition to AB 2892.

C. Governor Davis issued an executive order "requiring all state contracts for $100,000 or more, be competitively bid until new regulations are developed." The Governor has appointed a three-member panel to review contracting and procurement procedures and develop new regulations within 90 days.

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF MAY 7, 2002

ACTION: Adopted on May 21, 2002.
VOTE: Alvarado, Bos, Harrigan - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES
On May 21, 2002, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.
VOTE: Alvarado, Bos, Harrigan - Aye.

PROPOSED DECISIONS

TOINETTE CROCKETT, CASE NO. 01-2470
From 30 working days suspension
Office Technician (Typing)
Department of Transportation
ACTION: Thirty days suspension modified to a five working days suspension

WILLIAM HORSPOOL, CASE NO. 02-0108
Appeal from denial of back pay
Correctional Officer
Norco - California Rehabilitation Center
Department of Corrections
ACTION: Back pay dismissed

MAMIE JONES, CASE NO. 02-0074
Appeal from five-percent reduction in
Salary for five months
Dispatcher Clerk
Department of Transportation
ACTION: Five percent reduction in salary for five months revoked

RUFUS LINDSEY, CASE NO. 01-3651
Appeal from dismissal
Correctional Officer
Susanville - California Correctional Center
Department of Corrections
ACTION: Dismissal modified to 90-calendar days suspension

CARL W. MARTIN, CASE NO. 02-0184
Appeal from five-percent reduction in
salary for six months
Correctional Officer
Corcoran - State Prison
Department of Corrections
ACTION: Five percent reduction in salary for six months modified to an official reprimand

WILLIAM OBERA, JR., CASE NO. 01-4048
Appeal from dismissal
Digital Print Operator II
Department of General Services
ACTION: Dismissal modified to suspension for six months with back pay, benefits and interest if any

PATRICIA SABATO-JONES, CASE NO. 01-3789
Appeal from dismissal
Staff Information Services Analyst (Specialist)
California Unemployment Insurance Appeals Board
ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself

ROMANDO SIZEMORE, CASE NO. 00-0418B
Appeal for determination of back salary, benefits, and interest after reinstatement
Parole Agent II
Department of Corrections
ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself

JULIE MANSFIELD, CASE NO. 01-1989E
Appeal from discrimination and retaliation
Supervising Investigator II (DMV)
Department of Motor Vehicles
ACTION: Retaliation complaint denied

BARBARA NELSON, CASE NO. 01-3349
Appeal from five-percent reduction in salary for twelve months
Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: Five percent reduction in salary for twelve months sustained

XIAOPENG XU, CASE NO. 01-3110
Appeal from rejection during probationary period
Research Program Specialist II (Economics)
Department of Industrial Relations
ACTION: Rejection during probationary period sustained

PETITION FOR REHEARING

WAYNE POWERS, CASE NO. 01-3646P
Appeal from Dismissal
(Withdrawal of action or appeal)
Correctional Plant Supervisor
Corcoran - Substance Abuse Treatment Facility
Department of Corrections
ACTION: Petition for rehearing filed by appellant granted and appeal remanded to Chief Administrative Law Judge for assignment for hearing on merits

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1 EXTENSION.

ACTION: See pages 15-18.

8. WITHHOLD APPEALS
On May 21, 2002, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Alvarado, Bos, Harrigan - Aye.

TONY ALBANO, CASE NO. 01-2005
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

RUSSELL ALLISON, CASE NO. 01-0890
Classification: Correctional Officer'
Department of Corrections
ACTION: DENIED

RODOLFO ALVARADO, CASE NO. 01-2332
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

PATRICK ALVAREZ, CASE NO. 01-2592
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

SONIA AVILA, CASE NO. 01-2126
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

MARK FOWERS, CASE NO. 01-1411
Classification: Cadet, CHP
California Highway Patrol
ACTION: GRANTED

GILBERT CRUZ, CASE NO. 01-2996
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

JOSE GARCIA, CASE NO. 01-2128
Classification: Correctional Officer
Department of Corrections
ACTION: WITHDRAWN

WESLEY GHORMLEY, CASE NO. 01-2301
Classification: Correctional Officer
Department of Corrections
ACTION: WITHDRAWN

ALEX GONZALEZ, CASE NO. 01-2303
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

KEVIN GREEN, CASE NO. 01-2540
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TIFFANEY GREGGS, CASE NO. 01-2299
Classification: Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: DENIED

CLEMENT IBEABUCHI, CASE NO. 01-2545
Classification: Medical Technical
Assistant (CF)
Department of Corrections
ACTION: DENIED

JAMES KLEINHAMMER, CASE NO. 01-2298
Classification: Medical Technical
Assistant (CF)
Department of Corrections
ACTION: DENIED

JAIME MERCADO, CASE NO. 01-2398
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CARMEN STUART, CASE NO. 01-1389
Classification: Motor Vehicle Field
Representative
Department of Motor Vehicles
ACTION: DENIED

9. MEDICAL APPEALS
On May 21, 2002, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Alvarado, Bos, Harrigan - Aye.

CYNTHIA CORNETT, CASE NO. 02-0319
Classification: Psychiatric Technician (Safety)
Department of Mental Health
ACTION: DISMISSED

LUISA HICINBOTHOM, CASE NO. 01-3065
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

MARY LAWSON, CASE NO. 01-3489
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: DENIED

RENEE RODRIGUEZ, CASE NO. 02-0090
Classification: Youth Correctional Counselor
ACTION: DISMISSED

10. MERIT ISSUE COMPLAINT
On May 21, 2002, the Board adopted the following decisions presented by Laura Aguilera, Assistant, Executive Officer, California State Personnel Board.
VOTE: Alvarado, Bos, Harrigan - Aye.

(Merit Issue Complaint)
MARGARET TEAGUE, CASE NO. 01-2383
Classification: Staff Counsel
Department of Corrections
ACTION: DENIED

11. PETITION FOR REHEARING CASE
On May 21, 2002, the Board adopted the following decisions presented by Laura Aguilera, Assistant, Executive Officer, California State Personnel Board.
VOTE: Alvarado, Bos, Harrigan - Aye.

(Petition for Rehearing)

JASON MAY, CASE NO. 01-3096P
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

12. NON-HEARING CALENDAR
On May 21, 2002, the Board adopted items A-E. These items were presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Alvarado, Bos, Harrigan - Aye.

A. REPEAL OF RULE 548.96
State Personnel Board staff is proposing to repeal State Personnel Board Rule 548.96 in order to comply with Professional Engineers in California Government v. State Personnel Board (2001) 91 Cal. App. 4th 341.

B. INDUSTRIAL SUPERVISOR, DEPARTMENT OF PRISON INDUSTRY AUTHORITY (PIA)(POULTRY PROCESSING)
PRISON INDUSTRIES SUPERINTENDENT I (POULTRY PROCESSING)
PRISON INDUSTRIES SUPERINTENDENT II (POULTRY PROCESSING)
INDUSTRIAL SUPERVISOR, PRISON INDUSTRIES (POULTRY ABATTOIR)
INDUSTRIAL SUPERVISOR, PRISON INDUSTRIES (POULTRY PRODUCTION)
PRISON INDUSTRIES SUPERINTENDENT I (POULTRY ABATTOIR)
PRISON INDUSTRIES SUPERINTENDENT I (POULTRY PRODUCTION)
PRISON INDUSTRIES SUPERINTENDENT II (POULTRY PRODUCTION/ABATTOIR)
The Department of Prison Industry Authority proposes to establish the new parenthetical classifications of Industrial Supervisor, PIA (Poultry Processing), with a six-month probationary period, Prison Industries Superintendent I (Poultry Processing) and Prison Industries Superintendent II (Poultry Processing) with 12-month probationary periods; and to abolish the classifications of Industrial Supervisor, Prison Industries (Poultry Abattoir, Industrial Supervisor, Prison Industries (Poultry Production), Prison Industries Superintendent I (Poultry Abattoir), Prison Industries Superintendent I (Poultry Production, and Prison Industries Superintendent II (Poultry Production/Abattoir).

C. EQUITY RESOLUTION FOR NAVNEET GREWAL
Equity resolution to allow Navneet Grewal to remain in the classification of Associate Information Systems Analyst (Specialist).

D. EQUITY RESOLUTION FOR CAROLYN WILSON
Equity resolution to allow Carolyn Wilson to remain in the classification of Labor Relations Specialist.

E. EQUITY RESOLUTION FOR PERSONNEL SERVICES SPECIALISTS II
The Employment Development Department, with the concurrence of the Department of Personnel Administration and on behalf of all state departments, requests an equity resolution to allow former Personnel Services Specialists II incumbents who were disadvantaged by a specification revision effective June 19, 2001, a one-time eligibility to compete in the current examinations for the Personnel Supervisor I.

13. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

A. CALTRANS EQUIPMENT OPERATOR I
CALTRANS EQUIPMENT OPERATOR II
The Department of Transportation proposes to remove the "H" (Hazardous Materials) endorsement requirement from the minimum qualifications of both the Caltrans Equipment Operator I and Caltrans Equipment Operator II classifications and place the requirement under additional desirable qualifications.

B. FIREFIGHTER, CORRECTIONAL INSTITUTION
FIREFIGHTER CAPTAIN, CORRECTIONAL INSTITUTION
The Department of Corrections proposes a revision to the title of Firefighter, Correctional Institution to Fire Captain, Correctional Institution.

C. ASSISTANT CHIEF PUBLIC UTILITIES COUNSEL
The California Public Utilities Commission proposes a specification revision to the Assistant Chief Public Utilities Counsel to broaden minimum qualifications and update language in the specification.

ACTION: Noted

14. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) CHIEF OF GRANT PROGRAMS
The California Arts Council proposes to allocate the above position to the CEA category. The Chief of Grant Programs supervises 16 grant programs with a grants budget of $19 million. The department indicates that the position is at the second organizational level and reports to the Director.

(2) CHIEF ADMINISTRATIVE OFFICER
The California Arts Council proposes to allocate the above position to the CEA category. The Chief Administrative Officer has responsibility for the full range of administrative services, administering the functions through subordinate staff. The department indicates that the position is at the second organizational level and reports to the Director.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) LEGISLATIVE DIRECTOR, CALFED BAY-DELTA PROGRAM
The Department of Water Resources' request to allocate the above position to the CEA category has been approved effective April 18, 2002.

(2) DISTRICT DIRECTOR, SHASTA CASCADE SERVICE DISTRICT
The California Conservation Corps' request to allocate the above position to the CEA category has been approved effective April 18, 2002.

(3) CHIEF, LEGISLATION AND POLICY
CHIEF, PROGRAMMATIC SERVICES
The Department of Industrial Relations' request to allocate the above positions to the CEA category have been approved effective April 18, 2002.

(4) CHIEF, eGOVERNMENT SOLITIONS/SPECIAL PROGRAMS DIVISION
The Secretary of State's Office request to allocate the above position to the CEA category has been disapproved effective May 2, 2002.

(5) EMERGENCY PREPAREDNESS MANAGER
The Department of General Services' request to allocate the above position to the CEA category has been disapproved effective May 2, 2002.

(6) DEPUTY SECRETARY-MANAGER
The Department of Food and Agriculture's request to allocate the above position to the CEA category has been approved effective May 2, 2002.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. State Personnel Board proposes regulations to clarify and codify the process for filing, processing, hearing, and deciding complaints of Whistleblower Retaliation in State Service. (Hearing held February 7, 2002).

   NO ACTION

2. State Personnel Board proposes regulations to clarify the Discovery Process that will apply to evidentiary hearings 1.concerning specified complaints or appeals, in some cases also involving alleged discrimination or retaliation. (Hearing held February 7, 2002).

   NO ACTION

3. STATE PERSONNEL BOARD STAFF'S REPORT ON THE STATUS OF THE STATE DISCRIMINATION COMPLAINT PROCESS. (Hearing held March 5, 2002).

   NO ACTION

4. MARTIN GREENHALGH, CASE NO. 01-1055. Appeal from five-percent reduction in salary for 12 months. Department of Corrections. (Hearing held March 5, 2002).

   NO ACTION

5. PETE REECE, CASE NO. 00-1605. Appeal from denial of request for reasonable accommodation. Department of State Compensation Insurance Fund. (Hearing held March 5, 2002).

   NO ACTION

6. SENIOR VOCATIONAL REHABILITATION COUNSELOR (SAFETY)
   The Department of Mental Health proposes to establish the class of Senior Vocational Rehabilitation Counselor (Safety) to define public protection duties performed and the special physical characteristics required of incumbents; and establishment of a 12-month probationary period. (Presented March 19, 2002).

   NO ACTION

7. KIMBERLY ARNOLD, CASE NO. 00-3959. Appeal from dismissal. Department of Corrections. (Oral argument held May 7, 2002).

   NO ACTION

8. STEPHANIE RODRIGUEZ, CASE NO. 99-5150; DARRELL SNELL, CASE NO. 00-0002; RENEE VILLARREAL, CASE NO. 00-0030; AND WAYNE VILLARREAL, CASE NO. 00-0033. Appeal from suspension. Department of Corrections. (Oral argument held May 7, 2002).

   NO ACTION

9. EXPEDITED HEARINGS - PROPOSED AMENDMENT TO STATE PERSONNEL BOARD RULE 52.4. (Hearing held May 7, 2002).

   NO ACTION

10. ANSWER ON APPEALS FILED WITH STATE PERSONNEL BOARD. PROPOSED AMENDMENT TO STATE PERSONNEL BOARD RULE 63. (Hearing held May 7, 2002).

    NO ACTION

11. DANIEL RUIZ, CASE NO. 01-1118. Appeal from dismissal. Department of Developmental Services. (Oral argument held May 7, 2002).

    NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on May 21, 2002.

for WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Bos, Harrigan - Aye.