



**MINUTES OF THE TWO-HUNDRED AND THIRD
MEETING OF THE UNIVERSITY CIVIL SERVICE MERIT BOARD –
JUNE 1, 2017**

**State Universities Civil Service System Office
1717 Philo Road, Suite 24
Urbana, Illinois 61802
&
(Video Conference)
University of Illinois at Chicago
Human Resource Building
Room 201D
715 South Wood Street
Chicago, Illinois
&
(Video Conference)
Southern Illinois University Carbondale
Miles Hall
Conference Room 003A
1255 Douglas Drive
Carbondale, Illinois**

Chair Montgomery called the meeting to order at 10:20 a.m. with a lack of a quorum. Mr. Caulkins arrived at 11:05 a.m.

Member present at the primary meeting location were: Randal Thomas, representing Southern Illinois University and Daniel Caulkins, representing Eastern Illinois University.

Members present at the Chicago video conference location were: Lyneir Cole, representing Western Illinois University, Chair; John Butler, representing Northern Illinois University; Carney Barr, representing Governors State University; and James Montgomery, representing the University of Illinois.

Members absent were: Kambium Buckner, representing Chicago State University; Rocky Donahue, representing Illinois State University; Marvin Garcia, representing Northeastern Illinois University; and Jill Smart, representing the University of Illinois.

Also present were: Jeff Brownfield, Executive Director; David DeThorne, Legal Counsel; Teresa Rademacher, Secretary for the Merit Board; Elyne Cole, representative of the Human Resource Directors Advisory Committee; and Andy Small, Chair of the State Universities Civil Service Advisory Committee. Various other university employees and University System office staff were also in attendance.

Chair Montgomery stated that since there was no quorum the board would conduct non-action business. Chair Montgomery welcomed the new board members and asked each to give a brief introduction. Carney Barr was introduced as a new board member. Mr. Barr stated that he represents Governors State University and has been on the GSU Board of Trustees since last January. John Butler was introduced as a board member. Mr. Butler stated that he represents Northern Illinois University (NIU) is that he is currently serving as the Chair of the NIU Board of Trustees and that his interest in the governing boards goes back several years. Randal Thomas was introduced as a new board member. Mr. Thomas stated that he is currently serving as Chair of Southern Illinois University Board of Trustees and that he has no university experience and that he served as the 36th Adjutant General.

Report of the State Universities Employee Advisory Committee – Andy Small

The Merit Board heard a report from Andy Small, Chair of the State Universities Civil Service Advisory Committee (EAC). Mr. Small welcomed the new Merit Board members. EAC recently meet on May 2 and 3, 2017 at Illinois State University (ISU) and thanked ISU for the hospitality the members received. The committee on met on May 4, 2017 with the Human Resource Directors Advisory Committee, along with the University System staff. He also thanked the Merit Board for their support. Mr. Small stated as the last meeting, discussion was held regarding out-of-state recruiting and that there continues to be support for this, especially for specialized positions and also noted the locations of several universities how this could assist those universities. Discussion was also held regarding the sunset clause regarding furloughs. He stated that the general consensus of the committee is that the current furlough rule was a good start to review and will be revisited in the near future due to the sunset clause. He further stated that the electronic voting for the EAC elections have gone very well. The University System is working on minimum benefit guidelines for everyone and the committee looks forward to continuing to work on this issue and hopes that the Merit Board will support the final outcome.

Report of the Human Resource Directors Advisory Committee – Elyne Cole

The Merit Board heard a report from Elyne Cole, representative of the Human Resource Directors Advisory Committee (HRDAC). Ms. Cole stated that the University System has good components that strive to promote a merit based system; however it is also fairly rigid in that one size fits all approach does not work for all universities. The University System has not kept up with changes over the years and that many changes must go through the legislative process and do not always move forward even when backed by EAC and HRDAC. A significant change has been the enormous growth of regulations of human resources by federal regulations, individual university policies, and union agreements on top of the University System requirements. Ms. Cole stated that she is encouraged by the changes being brought forward such as the out-of-state recruitment, relaxing rules related to soft money positions, strengthening the language for pilot programs, relaxing standards for regulated positions such as nursing and police offices, and simplifying the discharge process. She further stated that we are in the 21st century and institutions are forced to work within a 20th century human resource book. She stated that some changes could be is to involve Merit Board members in supporting the University System staff and the chief human resource directors to address positive changes.

Mr. Barr asked if the Human Resource Directors Advisory Committee issues a report to the Merit Board members regularly. Ms. Cole responded that this verbal report is the only report given to the Merit Board members at this time. Mr. Barr suggested that maybe going forward a report should be given to the members of the Merit Board so the members have a better understanding of HRDAC role and issues.

Mr. Montgomery asked for a status of the legislative change regarding out-of-state residency. Mr. Brownfield stated that he would give a report on this topic later.

Legislative Agenda

Mr. Brownfield stated that included in the agenda materials was a copy of HB 3185 regarding several proposed legislative changes. Mr. Brownfield stated that the change regarding residency requirements was not able to be included in the proposed legislature because of a lack of support with our sponsors and if so included the bill would not pass. At this time the residency requirement has been taken out and has been put on the back burner. Mr. Brownfield stated that the University System had presented oral testimony before the House, but at this time the bill is stuck in the House. He further stated that we do have a representative in the Senate, but until it gets out of the House, there is nothing further the University System can do. Mr. Brownfield gave an overview on the proposed language changes being presented.

Update on the Governance, Risk, and Compliance Audit Charter and Process

Ms. Neitzel presented an update to the Merit Board regarding audit activities. She stated the audit program is a primary responsibility of the University System. The audit program was suspended in January 2016 to allow the University System to update and overhaul the audit program in conjunction with the lack of budget funding. She further stated that the stop-gap funding allowed the office to conduct two on-site audits; however no regular on-site audit visits as of January 2017 have been scheduled due to a lack of a state budget. Ms. Neitzel stated that until a full state budget is approved future on-site visits will be curtailed. There are several audits in process and the University System is working with the universities to complete these audit reports and the final audits will be published and available on our agency's website.

Mr. Butler asked about the audit schedule and Mr. Brownfield stated that these audits are usually conducted every two years.

Report of the Executive Director – Jeff Brownfield

Mr. Brownfield provided an agency report which included the following items:

- *Budget Updates FY 17, and FY 18* – Mr. Brownfield stated that on May 28, 2017 our agency was called for a special hearing regarding SB 6. SB 6 includes \$230K for operating expenses and approximately \$700K for payroll expenses for FY 17. He further stated that for FY 18 there is currently \$1.17M included and that this amount is approximately our agency's FY 15 appropriation. He further stated that our agency can manage with this amount, but we will have several interest charges that will need to be paid from this, so this is basically a cut for our agency. He further stated that related to the budget issues Northeastern Illinois University has announced 150 layoffs, SIU Carbondale around 50 layoffs, and Northern Illinois University had a round of layoffs last week and that the University System has been contacted from most of the other campuses pertaining to lay off questions. Mr. Brownfield stated that when he testified he made the point that fielding these calls take our staff away from regular day to day activities.
- *Classification/Examination Update* – Mr. Brownfield discussed the list of classifications the University System has been working on.
- *Compensation Rates/Ranges and Policies* – Mr. Brownfield stated the University System has a statutory obligation to set up pay rates and ranges; however the universities submit these pay rates and ranges for University System approval. He stated that we have had a long tradition of not having wide ranges and the universities are now telling us that that process is antiquated, so we will need to have new procedures and maybe new rules in the future.

- Update on approved/current Demonstration Projects – Mr. Brownfield informed the Merit Board on a couple of on-going demonstration projects. He stated that the tracking of positions at the UIUC is going fantastic and that we will eliminate the program and let them continue to tracking positions. We had a new student employee pathway program to recruit students and may had one new hire by ISU. He also stated that we have one other pilot project to be discussed as an action item later.

Annual Ethics Training for Merit Board Members and Staff

Mr. Brownfield noted that there were a few Merit Board members that still needed to complete Ethics Training for 2017 and that we will address those members individually.

Report of Legal Counsel – David DeThorne, Manager, Legal Services and Legal Counsel

Mr. DeThorne updated the Merit Board regarding legal issues. He stated that currently there are two discharge cases pending.

Mr. DeThorne stated that we have two Administrative Review Cases. The 1st being Officer Heard. A discharge hearing was held and the Merit Board determined that Officer Hearing should be discharged. Officer Heard then appealed to the trial court and then the trial court applied the incorrect legal standard and was going to send it back to the Merit Board. The Attorney General was able to convince the judge that the discharge was within the realm of appropriate conclusion. It is now up to Officer Heard if he proceeds to take this case to the Appellate Court.

The second case is for Deborah Willis. Ms. Willis went through the discharge hearing process and was discharge by the Merit Board. Ms. Willis incorrectly appealed her case with the city of Chicago; however she did not list the Merit Board. Under the law, the judge gave her 35 days to refile and name the Merit Board. Mr. DeThorne stated that she recently filed something and that he was in discussions with the Attorney General's office to determine if this is a complaint. The Merit Board did decide that discharge was appropriate and the facts clearly show she lacked a certification that was necessary in her position and she did not have it.

NOTE: Mr. Caulkins arrived at this time to conduct business. At this time attendance was called.

Consideration of participation by other Merit Board Members not physically present at meeting site

There University System office received no requests to participate by audio conference.

Public Comments

The University System Office had received no requests to present public comments.

Merit Board Reorganization

The Merit Board conducted reorganization activities, electing its officers for calendar year 2017. Chair Montgomery stated that he would be stepping down as Chair of the Board at this time. Chair Montgomery called for nominations for Chair. Chair Montgomery made a motion to nominate Mr. Cole for Chair. Mr. Butler seconded Chair Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Mr. Montgomery called for nominations for Vice Chair. Mr. Montgomery made a motion to elect John Butler as Vice Chair. Mr. Butler declined the nomination. Mr. Montgomery nominated Mr. Thomas as Vice Chair. Chair Cole seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Mr. Montgomery called for nominations for the Executive Committee. Chair Cole made a motion to elect Carney Barr for the Executive Committee. Mr. Barr declined the nomination. Mr. Montgomery made a motion to elect John Butler to the Executive Committee. Mr. Caulkins seconded Mr. Montgomery's motion. Mr. Butler made a motion to elect Mr. Caulkins to the Executive Committee. Mr. Montgomery seconded Mr. Butler's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the two motions carried.

Chair Cole appointed Teresa Rademacher to serve as the Secretary for the Merit Board.

Consideration of the Minutes of the 202nd Meeting of the Merit Board, November 30, 2016

The minutes of the 202nd Meeting of the Merit Board, November 30, 2016 had been transmitted to members of the Merit Board with the agenda materials.

Mr. Montgomery moved to approve the minutes of the 202nd Meeting of the University Civil Service Merit Board held on November 30, 2016. Mr. Caulkins seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Update and authorization for the Executive Director to implement and administer the Merit Board Budget for FY 2018

Mr. Brownfield updated the members that the appropriation FY 18 was currently in Senate Bill 6. Mr. Brownfield stated that the Resolution discussed salary adjustments and he stated that any salary adjustments will depend on when and if a state budget would pass.

Mr. Montgomery asked is we have authorization at this time to spend any money. Ms. Rademacher stated that the University System is to continue to conduct business on a normal basis and the agency should continue to make purchases as if we had a state budget; however the agency is just not able to pay the vendors. She further stated that some vendors are willing to do business in hopes that a budget will be passed sooner than later.

Chair Cole requested a motion on the Resolution presented by the Executive Director at the meeting. Mr. Barr made a motion to adopt the following Resolution:

RESOLUTION

BE IT RESOLVED THAT the Merit Board authorizes the Executive Director to administer the FY 2018 agency budget, pursuant to the availability of funds and final approval by the Governor's office. Contingent upon the availability of funds, the FY 2018 agency budget may include employee salary adjustments administered in accordance with applicable Merit Board Policies and Pay Administration Guidelines. The Merit Board also authorizes the Executive Director to make any other expenditures necessary for the operation of the State Universities Civil Service System and the Merit Board office, commencing July 1, 2017 and continuing until such time as the FY 2018 appropriation becomes effective or the Merit Board directs otherwise.

Mr. Montgomery seconded Mr. Barr's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Discussion and action on proposed rulemaking to Section 250.110 of the Illinois Administrative Code (80 Ill. Adm. Code §250.110) regarding discharges/demotions

Mr. Brownfield informed the members of the changes that are being recommended for the Second Notice Period. He stated that the items highlighted in yellow on the handout will be removed. Changes include: 1) "Without pay" will be removed, as some universities suspend employees in last chance agreements with pay. 2) "Job Abandonment" regarding no-call/no-show the University system have received some push back on the details, so this will be removed for now. 3) "Layoff" the definition of layoff section will be removed. Mr. Brownfield stated that currently we do not have a proper rule in place regarding layoffs and our agency received some

push back so we will also be removing this for now to allow the rest of the rule to go forward. A major addition to the rule is relating to failure to attend a hearing.

Mr. DeThorne stated the rule relating to failure to attend a hearing is to streamline the process. The JCAR is an involved process that goes through notices periods requiring the agency to take in input from outside sources. After a rule has gone through the JCAR process then the rule has the full effect of Illinois law. For an employee or employer to have rights it must be in the rules as opposed to something that is solely done in the office. Layoffs are in the statute but not defined, and this will have an impact on the rights of employees and employers. If this second notice period is not submitted then we will need to start completely over. This allows us to make the changes submitted as of now and revisit the other items at a later time.

Mr. Cole asked how many universities use the policy with pay for suspensions. Mr. Brownfield said we do not have restrictions outside that it cannot be over 30 days. Mr. Brownfield asked Ms. Arvin from UIUC to address this issue. Ms. Arvin stated that the UIUC implemented a discipline without punishment process several years ago. We have tried to take punishment out of the discipline process and that this process is to change the behavior of employees without punishing them or their family. It was noted that ISU also uses a process similar to UIUC's.

Mr. Butler had a question regarding the failure to appear item and wanted to know what happens if someone wishes to reschedule or a family issue regarding hearings. Mr. Brownfield stated there is an appeal process within the rule if an employee does not appear and can provide evidence for reasonable issues and the rule provides that we can go back and schedule a hearing for another date.

Mr. Butler asked is there an industry standard as to why we don't have a postponement provision. Mr. Brownfield stated that in a hearing we gone through extensive measures to schedule a hearing date that works for all parties. In the past we have required the universities/agencies to perform the hearing in the absence of an employee when not showing up for a hearing.

Mr. Cole asked if three consecutive scheduled work days wasn't the standard for no-call/no-show. Mr. Brownfield stated that we had also thought that, but we have had some contract agreements that show other things. Our agency will need to reword this section to show that universities can have some flexibility and do what is best for their university.

Mr. Caulkins asked if the caveat be that a formal labor agreement would supersede this particular rule. Mr. Brownfield stated yes; however we need to make sure our rules are the standard and labor agreements are in conjunction with our rules. Mr. Cole asked how many unions are involved. Mr. Brownfield said just the University of Illinois has over 50 agreements.

Mr. Montgomery made a motion to approve the proposed rule for the 2nd Notice Period and final JCAR review. Mr. Butler seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Consideration of an amendment to the Demonstration Project or Pilot/Study Program for the Sponsored Program to extend the program for one additional year

Mr. Brownfield stated that the University of Illinois at Chicago (UIC) started a sponsored program looking at people in soft funds or grant funded positions. This was determined as a pilot program. At this time we are asking to extend the program for one year to gather statistics, work with campuses and to go forward with the rulemaking process.

Mr. Butler asked if this program was for UIC only. Mr. Brownfield responded that at this time it is only for UIC only. UIC proposed this program and the University System wanted to limit the program to see how it would work. Mr. Ginsburg stated that approximately 100-150 employees have come on using research grants for a year or multiple years. Mr. Brownfield confirmed these employees are walled off from the audit and standard process such as bumping rights.

Mr. Montgomery made a motion to amend the Sponsored Programs Demonstration Project till June 30, 2018. Mr. Butler seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Discussion and possible consideration of the Public Officials Errors and Omissions Insurance – July 1, 2017 through June 30, 2018

Ms. Rademacher stated that this is an Errors & Omissions Insurance Policy that our agency has had for many years; however due to a lack of state funds in 2016 the policy was cancelled by the insurance company in mid October 2015. From mid October 2015 to July 1, 2016 our agency was without coverage. The University of Illinois (UI) agreed to fund the policy for the FY 17 time period; however due to the lapse in service the policy increased sufficiently for FY 17. Ms. Rademacher further stated that at this time the agency has been unable to reimburse the UI due to lack of funds and that we have been informed that the UI will not coverage the cost of the policy for FY 18. She further stated the application process has been started, but without a state budget in place and the insurance company will require payment to be made within 30 days, our agency is unsure if we will be feasible to continue with this.

Mr. DeThorne stated that as a general matter all board members are legally covered. By enlarge anything that would take you out of protection by the state, it probably would not be covered in this Errors & Omissions Insurance Policy. As it is, each board member have an individual attorney with their university. As a practical matter if the board determines this policy is needed, there are no funds to secure the policy at this time.

Discussion was held on the cost of the policy. Ms. Rademacher informed the board is was around \$14,000 last year, an increase approximately \$4,500 from the year before. Mr. Butler asked what the current deductible was. Ms. Rademacher stated that it is \$10,000. Mr. Butler asked what

the definition of a claim under the current policy would be or what would be a legitimate claim. Mr. Brownfield stated there is not a specific item, if we had acted outside of our ACT.

Mr. DeThorne stated that board members are being defended by the State Attorney General's office. The AG is defending board members now in current cases as a member of this board due to the board members performing duties in their official capacity. There is deference from the courts when a case goes to trial since members of the board are performing government assigned duties in their official capacity.

Mr. Montgomery stated that he was more comfortable having this information, as there is a judiciary responsibility as members of this board to this system and if the AG's office picks up the slack then we as board members should be ok. Mr. Barr agreed unless we receive a budget and funds are available for the policy. Mr. Butler stated we have a responsibility over the University System and its employees and we have an obligation to protect our employees from risk. Mr. Brownfield said we can try again to get a better full understanding of what the policy covers. Although at this time we have zero dollars to pay for the policy and do not see a way this policy is not going to lapse at the end of the month. We can try to bring more information to you at the next meeting. We have great confidence in the AG's office as they have represented us in countless occasions.

Mr. DeThorne commented that we as employees in our official capacity also have the same coverage as members of the board through the AG's office. Mr. Butler wants the board to know when an external office such as the AG's office and we might be called in as a witness that we are on our own in a case like that. The AG's office would not allow our counsel to go with us. Mr. Caulkins asked if their university counsel wouldn't represent them if they were performing duties on their behalf. He is talking about the unique cases that are administrative and possible the current policy would not cover that. Mr. Caulkins stated this was an Errors & Omissions policy. Mr. Thomas stated we have an obligation to at least seek the continuation of this insurance policy.

Mr. Caulkins made a motion to table this item until the next scheduled meeting and direct the Secretary for the Merit Board to continue investigating the possibility of initiating this policy in the future. Mr. Montgomery seconded Mr. Caulkins' motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

External Investigation Response

Mr. DeThorne provided an update concerning a letter the University System had received from the Office of the Executive Inspector General (OEIG). The issue at hand is the disagreements between the University System and the University of Illinois at Urbana-Champaign (UIUC) concerning the application of Section 36e(3) of the Act regarding "other principal administrative employees by the Merit Board." This is an issue among all universities not solely with the UIUC.

As a practical matter there is currently an Exemption Procedure Manual, not rules, so the procedures manual is not law. "Principal Administrative Employee as determined by the Merit Board" has not been defined further in the Act, nor has it been defined in any Administrative Rules. The procedures manual has no legal force and effect, there is not equivalent that has been through the JCAR process. There is good faith disagreement between the universities and the University System. It is the University System's duty to clarify this to the full extent possible, and this is what the OEIG letter is requesting. The OEIG has referred this to matter to the Merit Board for action. The procedure manual is being applied as consistently as they can; however there is a question of the legal enforcement. What is the standard, what can be used to go to court. The question of what a "Principle Administrative Employee" is and what it the statutory obligation of the Merit Board and it is the responsibility of the Merit Board to determine this. The OEIG sent the letter months ago and indicted they wanted a response by June 1, 2017. The University System has contacted the OEIG and have let them know due to a lack of a quorum the meeting in May had to be rescheduled and have requested an additional 15 days to provide a response to the OEIG. The OEIG has granted this extension. Mr. DeThorne stated that the Merit Board members need to decide how they want to respond to the OEIG. Mr. DeThorne stated that he had provided a draft letter as an attempt to come up with a tentative plan.

Mr. Caulkins asked what type of legal action could be taken. Mr. DeThorne stated if someone questioned if their rights were being violated. Mr. DeThorne gave a couple of examples of a few situations on what could happen. Mr. Caulkins ask if this shouldn't be resolved at the university level. Mr. DeThorne stated yes, that there is where it should start; however if either the employee or the university is unhappy then the process moves to the University System and then potentially to the Merit Board.

Mr. Caulkins stated that in his experience with Eastern Illinois University (EIU) that it is much harder to get rid of civil service employees at EIU when EIU wants to realign departments and the preference of EIU is to hire Principal Administrative employees. The University System is an antiquated process in today's world. I would address it but make the disciplinary and discharge process much more liberated giving the universities more leeway to address their needs in who they should hire as civil service or exempt employees. It takes a great deal of time to discharge a civil service employee and with what we are facing in today's times, classifying who is a civil service employee is going to take time.

Mr. Brownfield stated the difficulty comes that at this point and time with the information in this investigation. He stated we may want to change the ACT as Mr. Calkins indicated, but the problem being that in this particular group of employees (PAAS) they have never been legally defined. The problem now is if we have an employee who is a PAA then that employee has no legal defense of why a person is not a civil service employee. Our ACT clearly states that all positions are civil service positions unless specially listed and then we have this undefined term including PAA and there is no legal bearing. The University System needs a legal definition.

Mr. Butler stated as he was reviewing the letter the turning point is the OEIG referral and the Merit Board has an obligation to the OEIG to at least attempt to improve the situation and clarify

the status quo. He further stated where this leads the University System is another question, but in responding to the outside investigation we need to give them something honest and genuine. This letter is about the best we can do in this environment and have a robust conversation and come up with a cooperative discussion and eventually the University System will need to do rulemaking that is inclusive of everyone's thoughts and opinions.

Mr. Cole stated that this letter was written to assure that the University System is going to take the necessary actions to correct this problem with an urgency to respond to OEIG and then focus on what direction the University System want to go. This letter should be used for the time being to respond. The Merit Board should come up with ideas to present for the next board meeting.

Mr. Montgomery made a motion to give direction to the University System to proceed with items 1-5 on page 2 in the letter and communicate this back to the OEIG. Mr. Caulkins seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Other Items as Presented

The next meeting of the Merit Board is scheduled for Wednesday, August 16, 2017. A motion was made by Mr. Montgomery to adjourn the meeting. Mr. Caulkins seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried. The meeting adjourned at 12:25 p.m.

Respectfully submitted,

/s/ Teresa Rademacher

Teresa Rademacher
Secretary for the Merit Board

APPROVED:

/s/ Lyneir Cole

Lyneir Cole, Chair
University Civil Service Merit Board

September 19, 2017

Date