



**MINUTES OF THE TWO-HUNDRED AND SIXTH
MEETING OF THE UNIVERSITY CIVIL SERVICE MERIT BOARD –
June 27, 2018**

**State Universities Civil Service System (University 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**

Due to a lack of a quorum, Executive Committee Member Jill Smart asked Mr. Brownfield to present non-action items for discussion.

Report of the Executive Director – Jeff Brownfield

Mr. Brownfield stated that for FY 19 the University System received a small increase of \$23,600 over the FY 18 appropriation bringing the FY 19 appropriation to \$1,082,200. He also stated that a breakdown of the budgets for FY 17 and FY 18 were included in the agenda materials and stated that the University System had already paid out approximately \$14,000 in prompt payment interests to vendors for receiving payments past the 90 day time limit.

At this time, Mr. Caulkins arrive.

Meeting called to order

Executive Committee Member Smart called the meeting to order at 1:08 p.m.

Members present at the primary meeting location were: Thomas Britton, representing Southern Illinois University; Daniel Caulkins, representing Eastern Illinois University; and Stuart King, representing the University of Illinois.

Members present at the Chicago video conference location were: Carney Barr, representing Governors State University; James Montgomery, representing the University of Illinois; and Jill Smart, representing the University of Illinois.

Members present by audio conference were: Lyneir Cole, Chair, representing Western Illinois University; and Rocky Donahue, representing Illinois State University.

Members absent were: Kambium Buckner, representing Chicago State University; and Veronica Herrero, representing Northern Illinois University.

Also present were: Jeff Brownfield, Executive Director; David DeThorne, Legal Counsel; Teresa Rademacher, Secretary for the Merit Board; Melissa Mlynski, representative of the Human Resource Directors Advisory Committee; Jill Odom, Chair of the State Universities Civil Service Advisory Committee (EAC). Various other university employees and State Universities Civil Service System (University System) staff were also in attendance.

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

Ms. Smart asked for approval for Merit Board members not physically present to actively participate by other means in accordance with the Open Meetings Act requirements. Mr. Montgomery made a motion to allow Chair Cole and Mr. Donahue to participate by phone. Mr. Barr seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Public Comments

Mr. Brownfield stated that the University System had received one request to present public comments. Michael Ginsburg from the University of Illinois at Chicago would like to present comments in regards to agenda item 11. After discussion, it was agreed to delay his comments until discussion of agenda item 11.

Merit Board Reorganization

The Merit Board conducted reorganization activities, electing a Vice Chair which became vacant to Mr. Thomas leaving the Merit Board. Ms. Smart asked what the duties of the Vice Chair were. Mr. Brownfield stated some of the duties. Ms. Smart called for nominations for Vice Chair. Mr. Montgomery made a motion to elect Ms. Smart as Vice Chair. Dr. King seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Ms. Smart called for nominations for the vacancy on the Executive Committee of the Merit Board. Mr. Barr made a motion to elect Mr. Montgomery to the Executive Committee. Ms. Smart seconded Mr. Barr's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Consideration of the Minutes of the 205th Meeting of the Merit Board, February 1, 2018

The minutes of the 205th Meeting of the Merit Board, February 1, 2018 had been transmitted to members of the Merit Board with the agenda materials.

Mr. Montgomery moved to approve the minutes of the 205th Meeting of the University Civil Service Merit Board held on February 1, 2018. Mr. Barr seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Consideration of Discharge Proceedings Number NIU-18-1 filed against Justin Bend by Northern Illinois University

Ms. Smart asked Mr. DeThorne to give an overview of the case. Mr. DeThorne stated the employer and the employee had both requested to speak before the Merit Board and both parties were at the Urbana location. Mr. Montgomery made a motion to allow both parties to speak before the Merit Board. Dr. King seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried. Mr. Brownfield stated that the comments needed to be limited to five minutes.

Greg Brady, Acting Vice President and General Counsel for Northern Illinois University, presented comments stating that the university had met its burden in regards to this case. The Hearing Officer found that Northern Illinois University (NIU) sustained its burden of proof in charges 1, 3, and 4 proving that Mr. Bend ran a number of sports pools from 2011 to 2017 and making extensive use of university property. In 2017, Mr. Bend ran several sports pools alone, one being the "NCAA March Madness" pool that had 100 participants at \$110 each with Mr. Bend collecting \$11,000. A total of \$10,000 was paid out to participants. The Hearing Officer found that Mr. Bend made extensive use of the university's computer technology and internet services to manage these sports pools. Also, the Hearing Officer found that Mr. Bend engaged in non-work related activities during normal work hours. The multiple unlicensed sports pools organized and managed by Mr. Bend qualified as a crime under the Illinois Criminal Law. Mr. Brady further stated that Mr. Bend had received personal benefits from running the pools and the pools were specifically designed to collect more funds than would be distributed to the participants. Mr. Bend was a supervisor with many supervisees participating in the pools. Mr. Brady concluded that NIU had meet its burden demonstrating that discharge was appropriate in regards to this case.

Bill Boznos, Attorney for Mr. Bend, stated that the punishment did not fit the crime. NIU had not meet its burden of proof in three of the six charges. Mr. Bend is a third generation NIU employee with 25 years of service at NIU and no previous incidents on his record. Mr. Bend does not deny running and managing these pools. NIU failed to state that they were aware of other similar pools operating within the university system. NIU had also failed to mention that Mr. Bend's supervisors had also participated in these pools. He had the blessings of his supervisors, as he had been told that these actions build teambuilding and comradery. Mr. Boznos stated then why are not Mr. Bend's supervisors participating in this hearing. Participants in the pool were also from the Human Resources (HR) Department. HR also sent out emails during working time notifying employees when these pools would start. He also stated that the person that signed the Written Charges for Discharge form had also participated in these pools. Mr. Bend did not personally profit from these pools, in fact he lost money. NIU claimed that Mr. Bend committed a criminal activity and Mr. Boznos asked then why did NIU not file a complaint and press charges (no charges of illegal activity were ever shown). Mr. Boznos stated that NIU said there was clear evidence that Mr. Bend used company resources during working time to manage the pools, after close analysis of what the hearing officer, NIU was unable to determine because of Mr. Bend's work schedule when he was actually working and when he was not. Also, NIU did not have a policy that prohibited this type of conduct until months later, right before Mr. Bend's hearing, which said an employee could not run sports pools. There is no evidence that Mr. Bend pressured anyone to play or participate in these pools. He further stated that it is important to understand that similar conduct by a similar employee resulted in a nine-day suspension and now the university wants to move straight to termination for a 25 year employee. Mr. Boznos concluded that he did not believe termination was an appropriate response to this situation.

Mr. Barr stated that everyone knows these pools are going on so why is this an issue now. Mr. Brady stated there are instances that low level employees participated in games of small amount of money, but this matter was of a different level and is recognized differently in the criminal statutes because of the dollar amount. These pools were unacceptable risks to NIU and the pools needed to be addressed and this had been investigated by the HR department and criminally by the NIU police.

Dr. King asked if NIU was aware of the allegations of other pools being investigated and are the standards being applied fairly. Mr. Brady replied that they did not receive any information of any other current employees participating in active pools. In January 2018, NIU issued a notice stating that these type of pools violate the NIU policy and may violate Illinois law. The degree to which a specific situation will be dealt with will depend on the circumstances, not all offences will result in termination. In this instance, the use of NIU time and resources is the justification of discipline in this discharge.

Mr. Caulkins asked why a different discipline path was followed for Art Hall. Mr. Brady stated that Mr. Hall assisted Mr. Bend in these activities; however, it was determined that there was a lack of direct evidence against Mr. Hall for these activities and that is why a nine-day suspension was issued for him. Mr. Caulkins asked if there had been any other disciplinary action offered to Mr. Bend. Mr. Brady replied that there was an initial investigation and Mr. Bend was placed on

administrative leave and at the end of the investigation the written intent to discharge was issued to Mr. Bend. Mr. Caulkins asked if it was brought up that Mr. Bend was a 25 year employee with a spotless record and Mr. Brady stated there was no dispute to Mr. Bend's work record.

Ms. Smart asked about Exhibit 9 findings. Mr. Brady commented that the exhibit showed the reports from the computer forensics finding that the activity had not occurred outside of work time. Ms. Smart asked if there had been performance issues or if Mr. Bend was still completing his work timely? Mr. Brady could not comment that there were any concerns from this direct supervisors and stated there was no disciplinary record in Mr. Bend's file. Ms. Smart asked if Mr. Bend's supervisors participated in the pools and if so, did they receive any discipline. Mr. Brady stated that he was not aware to the extent of the knowledge Mr. Bend's supervisors had other than participation and stated that they had not been disciplined. Ms. Smart asked why this case went directly to termination and why other actions were not considered. Mr. Brady stated that in the end, the HR department determined that discharge was the appropriate action in this case.

Mr. Britton asked about the knowledge of others participating in these pools and noted that it is common knowledge that pools take place in work environments and did NIU take action that these type of pools would be condoned. Mr. Brady stated "yes" that NIU had released two notices that these activities are condoned and disciplinary action of suspension up to and including discharge depending on the circumstances of the event could take place.

Mr. Caulkins asked if Mr. Bend had been placed on a paid or an unpaid leave during the investigation. Mr. Brady stated that Mr. Bend was on paid leave until the filing of the Written Charges for Discharge and then he was on an unpaid leave.

Mr. Britton asked if the suspension would affect Mr. Bend's retirement benefits. Mr. Boznos stated that Mr. Bend is within five years of qualifying for full retirement benefits.

Mr. Caulkins asked if NIU had attempted to settle this case before getting to this stage. Mr. Boznos stated that Mr. Bend offered to take a nine-day suspension, same as was given to Mr. Hall. In addition, Mr. Bend offered to take a lateral move to another department with similar duties. He further stated that NIU only offered to a severance plan of one month and then extended to two months and NIU had not made an attempt to meet us half way on anything.

Mr. Boznos stated that in response to Mr. Brady's comments of the circumstances determining the discipline or the circumstances between Mr. Hall and Mr. Bend are similar. Both employees collected money, filled out brackets, participated in the running of the pools, set up the parties and had information on their NIU computers. The only difference is Mr. Hall received a nine-day suspension and Mr. Bend was sent directly to termination. Mr. Boznos stated that Mr. Bend has been out of work now for the last six months and that this case should never have gotten to this point. NIU made a point of stating they released a notice that these pools are not acceptable; however, let it be noted that the notice was after the investigation of Mr. Bend had already begun.

Mr. Barr stated that he felt that Mr. Bend should not receive any discipline and that NIU did not prove its case; stating this is a frivolous case.

Mr. Caulkins noted that NIU should have settled this case and that this also reflects on the Merit Board’s process and the length of time to hear discharge cases. A nine-day suspension would have been acceptable since that is what Mr. Hall received; however at this time no suspension seems acceptable for what Mr. Bend has had to go through.

Mr. Montgomery stated that NIU’s process should be honored that they found Mr. Bend had violated the law by gambling. Mr. Bend’s punishment should be the number of days he has been off work to date without pay. Dr. King agreed with Mr. Montgomery that the time lost to date should be the penalty. Chair Cole agreed with reinstatement after suspension. Mr. Donahue also agreed with reinstatement after suspension and that termination was excessive in this case. A six month suspension is even a little excessive, suggesting a 30-day suspension would be more in line. Mr. Barr and the Merit Board would like to invoke a nine-day suspension same as Mr. Hall. Ms. Rademacher reminded the members that the administrative rule require a suspension of between 60 and 120 days. Ms. Smart suggested the 60-day suspension with reinstatement.

After discussion, Mr. Montgomery made a motion to reinstate Mr. Bend following the completion of a 60-day suspension without pay. Mr. Barr seconded Mr. Montgomery’s motion.

A roll call vote was taken and the motion was approved with the following vote:

Mr. MontgomeryAye
Ms. SmartAye
Mr. BarrAye
Mr. Britton Aye
Mr. BucknerAbsent
Mr. Caulkins.....No
Chair ColeAye
Mr. DonahueAye
Ms. HerreroAbsent
Dr. KingAye

Report of the Human Resource Directors Advisory Committee – Melissa Mlynski

The Merit Board heard a report from Melissa Mlynski, representative of the Human Resources Directors Advisory Committee (HRDAC). Ms. Mlynski stated that the primary focus for the HRDAC has been to prepare for the Principal Administrative Appointment Procedures or Exemption Procedures that will go into effect on October 1, 2018. The committee members are also focused on preparing to implement the procedures which include educating the many institutions and training staff. There have been several questions as to why PAA positions needed to be transferred to a civil service position and the HR Directors are responding to these type of

questions/issues. The HR Directors have also been informed by Mr. Brownfield that the audits will be suspended. Also she stated that the HR Directors have submitted classifications for review and classes that need to be deleted that are to be exempted under the new procedures and they look for more flexibility in the hiring practices. The committee members are still concerned about grant funded positions and how these positions will be preserved as grant funds run out. She stated that most employees entering into a grant funded position have full knowledge that they will not be allowed to bump into status civil service positions that are in non-grant funded positions.

Report of the State Universities Civil Service Advisory Committee – Jill Odom, Chair

The Merit Board heard a report from Jill Odom, Chair of State Universities Civil Service Advisory Committee (EAC). Ms. Odom stated that the EAC members have a variety of responsibilities in many areas across the university and give an employee’s point of view that are involved in the day-to-day operation of the institution. The committee still has concerns in regards to grant funded positions about misuse and classification expanded to adapt to new skill sets. She stated that the goal is to work together and invest in our employees. At the last committee meeting the members discussed desk audits.

Mr. Barr suggested that the HRDAC representative and the EAC Chair provide a handout in regards to their presentation at board meetings.

Update and authorization for the Executive Director to implement and administer the Merit Board Budget for FY 19

Mr. Brownfield stated that the FY 19 Appropriation had been signed and the agency received a lump sum appropriation with a 2% increase over the FY 18 Appropriation. Also he stated that the agency is looking at hiring additional staff.

Mr. Montgomery made a motion to adopt the following Resolution authorizing the Executive Director to implement the FY 19 budget as funds become available. Ms. Smart seconded Mr. Montgomery’s motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

RESOLUTION

BE IT RESOLVED THAT the Merit Board authorizes the Executive Director to administer the FY 19 agency budget, pursuant to the availability of funds and final approval by the Governor’s office. Contingent upon the availability of funds, the FY 19 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, 2018 and continuing until such time as the FY 19 appropriation becomes effective or the Merit Board directs otherwise.

Update on proposed rulemaking to Section 250.119 of the Code (80 Ill. Adm. Code 250.119) regarding language to add a Furlough Program

Mr. Brownfield stated that the Merit Board had approved the First Notice Period several months ago. The University System had met with the HRDAC group and EAC; however they recently met with union representatives who have a few concerns. The concerns have not been reviewed with the HRDAC or EAC groups due to timing. A discussion point for the union representatives is if there are going to be furlough programs that there be some type of “trigger” mechanism. An example would be as in the last few years when a budget was not passed by the General Assembly. The second request by the union representatives was to better clarify the collective bargaining responsibilities, but Mr. Brownfield stated that the University System already believes the rule states the union representatives concerns regardless of the new language. Mr. Brownfield said that this agenda item is strictly informational at this time and the additional language will be addressed with both HRDAC and EAC prior to asking for approval to move into the Second Notice Period.

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 turned the topic over to Michael Ginsburg as he had requested to make public comments.

Mr. Ginsburg stated that a letter had been provided last week and he would be speaking to the issue of the Sponsored Demonstration Project. He stated that the Pilot Program is due to expire on June 30, 2018 and requested that the program be extended for one year to June 30, 2019. The University of Illinois at Chicago (UIC) has been utilizing this pilot program since 2014 and it has provided opportunities to support important research. He stated the funding sources provide critical research and that an abrupt end to this pilot program could cause one of two possible outcomes. The first being, a need to immediately layoff staff due to limited resources the units would have and the second the financial jeopardy if the units decide to allow employees to continue, then the units would need to figure out an alternative source of funding which might not exist if grants or private donations would expire. He stated that there is also a great deal of work that needs to be completed so that answers can be provided to the University System to identify issues to strengthen the program.

Ms. Smart questioned the use of this program and had concerns in regards to layoffs. Mr. Ginsburg stated that there might be layoffs.

Mr. Brownfield stated that when the Sponsored Program Demonstration Project was originally approved/established, by the previous Executive Director and HR Director at UIC that the program did not have an exit strategy. He stated that the extension would allow for an exit strategy to be developed within the next year. The most important part of this is to update our statute and administrative rules so this is no longer a pilot program but becomes part of our overall system. The University System Office has started internally making political contacts and what needs to be done to move this program forward.

Mr. Caulkins stated that this goes back to the discussions on how employees are categorized and asked if this extension for another year would provide these answers? Mr. Brownfield stated that this would give everyone time to provide answers.

Also, Merit Board agenda materials provided to the board members stated that if the program was approved by the Merit Board, UIC would continue to only be able to hire employees through December 31, 2018 and then starting January 1, 2019 employees would need to be converted to traditional civil service appointments or terminated until legislation is approved. For this program to continue on a permanent basis, legislation would need to be developed and submitted to the General Assembly and signed by the Governor to amend the State Universities Civil Service Act.

Mr. Montgomery made a motion to approve the amendment to the Sponsored Programs Demonstration Project for an additional year, expiring on June 30, 2019. Mr. Caulkins seconded Mr. Montgomery's motion. In accordance with the Merit Board Bylaws, a voice vote was taken and the motion carried.

Legislative Agenda – HB 3185

Mr. DeThorne stated that HB 3185 was currently awaiting the Governor's signature. Some of the changes included in HB 3185 include the following:

- Language was added to allow a waiver of the requirement that "all examinations in the same classification shall be uniform" for law enforcement entry-level positions, and possibly medical professionals.
- Amended the language that would require that the hearing commence within a certain time period of the employee demanding the hearing, rather than be completed within 45 days of notice.
- Language was added that simply clarifies that, by specifying that certain powers could be delegated does not mean that the others could not also be delegated to the Executive Director.
- Language was added that allows for the limited use of trial programs to enhance the ability of constituent universities and agencies to try new methods of hiring and promotion that are consistent with merit principles of employment.

- Various language changes that eliminate out-of-date, duplicative, or inconsistent language, language that the legislature has indicated is not preferred, or language that is presumably a result of apparent oversight.

Mr. DeThorne further stated that any controversy that had been presented to our office has been resolved. Mr. Brownfield added that there were not any no votes in the House or the Senate. If the Governor signs HB 3185 it would take effect January 1, 2019.

OEIG External Investigation

Mr. Brownfield stated the new PAA Procedures are finalized and several universities have stated that they are starting the implementation process.

Report of the Executive Director – Jeff Brownfield

Mr. Brownfield reiterated the concern of the prompt payment interest costs and that the University System received about a \$23,600 budget increase for FY 19.

Mr. Brownfield stated that a list of classifications has been submitted by the HRDAC group for the need to be reviewed for revision, deletion, or updated. The University System is in agreement with some of the classifications that need to be deleted and some series of classes that need to be reviewed and that the some entry levels classes be kept as civil service, but the higher levels need to be moved to PAA positions in some series. One issue of concern is that several classifications have incumbents still in them and discussion will need to take place HRDAC on how this will be handled.

Mr. Brownfield mentioned that the agency is starting the process of hiring an HR Officer or HR Representative. In addition, Legal Counsel David DeThorne will be leaving the University System. Mr. DeThorne will stay on part-time during his relocation to help finalize the implementation of HB 3185, the new PAA procedures, and discharge cases.

Mr. Brownfield also reported that the Auditor General had completed their two-year compliance audit for FY 16 and FY 17 and he was happy to state that the agency had received no material findings.

Annual Ethics Training for Merit Board Members and Staff

Mr. Brownfield reiterated that a few Merit Board members still needed to complete the Ethics Training for 2018.

Governance, Risk, and Compliance Audit Program Activities

Ms. Neitzel commented that the audit program has been suspended until January 2019. However, there are currently still some audits still in process, including the University of Illinois at Chicago, Illinois State University, and Governors State University. Four final reports had been issued since the last Merit Board meeting, including the State Universities Retirement System, the Illinois Student Assistance Commission, Southern Illinois University School of Medicine, and the University of Illinois College of Medicine Rockford.

Report of the Legal Counsel – David DeThorne

Mr. DeThorne reported that the 45-day timeframe is an area of concern that Mr. Caulkins had also discussed and is an area that can be addressed at a later time. Mr. DeThorne and Mr. Brownfield will contact Mr. Caulkins directly to discuss and make suggestions on how to proceed. The University System had success with meeting the 45-day deadline.

Mr. DeThorne informed the Merit Board that there currently are two pending Administrative Review Cases. The Heard case, who was a Police Officer, in which the judge did agree with the Merit Board's decision to discharge. However, the employee is appealing the verdict.

Also Mr. DeThorne stated the Wendy Colwell, Administrative Review case, relating to a last chance agreement is pending. The employee did not name the University of Illinois at Urbana-Champaign (UIUC) as a party. UIUC will need to be served and then the parties will appear in court again, a date has not yet been set. Mr. Brownfield added that this is a critical case for the University System because last chance agreements have been an effective tool for universities and employees.

Other Items as Presented

Mr. Barr asked what would be involved to change the suspension timeframe of the 60-120 day suspension rule in regards to discharges. Mr. DeThorne stated that this is an administrative process. Mr. Brownfield provided background of the previous discharge options being reinstatement or discharge. The 60-120 days suspension was a general timeframe based on the time required for a discharge hearing and the timeframe between the Merit Board meetings. Ms. Smart feels the suspension timeframe needs to be adjusted and not be limited to a minimum of 60 days, but maybe seven-days.

Mr. Montgomery made a motion to adjourn the meeting. Mr. Barr 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 2:50 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

November 29, 2018

Date