

STATE PERSONNEL BOARD MEETING
MINUTES
APRIL 8, 2014
JAMES FLOYD VETERANS MEMORIAL BUILDING / 512-WEST BOARDROOM
10:00 A.M.

The following Board members were in attendance: Robert Joseph, Chair; Jewelle Johnson, Vice Chair; Taylor Hanson Haley, Member; Jim Rogers, Member; and Paul Babaz, Member.

Also present were: Candy Sarvis, Deputy Commissioner DOAS-HRA; Bryan Webb, Sr. Assistant Attorney General, Georgia Law Department; Katy Townsend, Director, HRA Policy & Compliance; and Kara Berlin, DOAS Legal Officer.

The meeting of the State Personnel Board was called to order by Chairman Robert Joseph.

Approval of Minutes / Vice Chair Jewelle Johnson presented the Minutes of the March 11, 2014 State Personnel Board meeting which was circulated to the Board and no corrections or changes were requested. A Motion was made by Mr. Joseph to approve the Minutes as presented. It was Moved by Mr. Rogers, seconded by Ms. Johnson and unanimously approved.

Board Vote to Approve Release of SPB Rules Modifications for Public Commentary:

Mr. Joseph expressed that given much of the Rules' changes are cross-references, language simplifications, and grammatical clarity, today's presentation should be focused mainly on the substantive changes. The Board will rely on the comment period for any additional proposed substantive changes.

Ms. Katy Townsend, Director, DOAS-HRA Policy & Compliance Unit presented the proposed Rules changes for Public Commentary. Prior to the meeting, the Board members were provided with summaries and copies of the proposed rule changes, current rules affected by the proposed modifications, and the proposed modified rules in advance of the meeting. Strike-through versions of the rules were distributed to Board at the meeting for extended reference. The following contextual points were made:

- The Rule changes involve a breakup of the long and complex set of rules into smaller rules to make it easier for individuals to locate their topic of interest.
- Originally, the Rules applied to classified employees only. In 2008, legislation was passed that extended the Rules to unclassified service, to preserve the legislative intent to have greater flexibility and efficiency with management of the unclassified service.
- All the rules that have special civil service rights were group into one extensive rule titled "Rules for Classified Employees."
- Recommendations were made by the Interagency Advisory Committee which identified 6 major topic areas within this rule as follows: Working Test and Permanent Status for Classified Employees, Reduction in Force for Classified Employees, Adverse Actions for Classified Employees, Appeals and Hearings for Classified Employees, Voluntary Separations and a classified Employee Grievance Procedure.
- To accomplish the breakup, we are looking at creating separate rules for the first five topics; combining the grievance procedure for classified employees with the procedure for unclassified employees; merging Rule 4 (Employer-Employee Relations) into the newly combined grievance procedure; and update Rule 15 (Changes to Employment Status) to accommodate the break-up of Rule 24.
- Currently, classified employees comprise seven (7%) percent of the state's workforce.

Rule 4 / Employee-Employer Relations. Recommend abolishing this rule and incorporating the 3 paragraphs into Rule 478-1-.20 titled Employee Complaint Resolution Procedure.

Rule 15 / Changes to Employment Status. Provides basic guidance on actions, i.e. demotions, promotions, relocations, transfers, suspensions, separations and staff reductions. Added provisions throughout the rule to support compliance with EEO, Family and Medical Leave, Military Leave laws, and the Fair Labor Standards Act. Also, provided additional guidance to the Rule related to long distance relocations.

1. **Pages 2-4 / Suspensions.** A framework was returned to the Rule regarding suspension without pay for both disciplinary purposes and pending criminal court action. The revised Rule will provide flexibility to agencies to suspend employees without pay for other reasons deemed appropriate for unclassified employees.
2. **Page 5 / Position Level Reduction.** A section was added to this Rule addressing the “Position Level Reduction.” This information was consolidated in one place to help the users locate the topic.
3. **Page 5-6 / Staff Reduction.** Provision related to the recall of unclassified employees following layoff was removed because it had no legal basis. A provision for EEO compliance was added relating to staff reductions to reflect a recent law change. Notifications of layoffs of 25 or more classified employees have been extended to include unclassified employees in the count.
4. **Page 6 / Effects of Job Changes on Classified Status.** A new section was proposed that better defines how job changes can affect classified status. Since these provisions related to classified and unclassified status are found in various Board Rules, Executive Orders, and the Georgia Code, this section is intended to assist with consistent application of these provisions.

Rule 20 / Employee Complaint Resolution Procedure. This Rule establishes a process for employees to have their concerns addressed, if believed their personal employment was unfairly and adversely affected. Historically, the state provided a formal process for classified employees. When the unclassified service began to increase in numbers, a separate grievance procedure was developed for unclassified employees.

1. The state no longer supplies a pool of Grievance Hearing Officers for classified employees, so the classified process has evolved into a model closer to the unclassified procedures.
2. This rule title was changed from “Employee Grievance Procedure” so that it would convey the intent for resolution.
3. Merged the separate grievance procedures for classified and unclassified employees into one procedure.
4. Merged provisions for Rule 478-1-.04 (Employer-Employee Relations) into the introduction of this Rule.
5. **Page 2, sec. 4 (a) / Grievable Issues.** A “Military or Veteran status” clause is included.
6. **Page 3, sec. 5 (a) / Non-Grievable Issues.** Updated the list of categories that could serve as a basis for unlawful discrimination or harassment. Based on state and federal laws, this list includes a catch-all “or other protected category” to prevent the need for a Rule revision as the law changes.
7. **Page 6, sec. 9 / Extension of Time Limits.** Stems from the classified employees’ procedure. This section allows agencies flexibility to extend time frames to accommodate emergencies, absences and operational needs.
8. **Page 7-8, sec. 15 / Emergency Provisions.** An Appeal Rights section was added to accommodate those appeals for classified employees. Also, to apply some direction for employees who file a grievance related to the Public Employees Hazardous Chemical Protection Rights Act and were not satisfied with the outcome of the grievance. These grievances may be heard at the Department of Labor.

Substantively, three (3) provisions were removed from this Rule as follows:

1. Third-Party representation provision.
2. Removed a mediation section because the state no longer maintains a pool of trained mediators.
3. Eliminates the need to retain the “Emergency Provisions” section which is sufficiently addressed in the “Extension of Time Limits.”

HR professionals involved in the review committee bring the perspective of both employee and employer when streamlining the Board Rules. Additional comments are welcomed from all sectors during the Public Comment Period.

For Recordkeeping and reporting, committee should review the possibility of extending the statute of limitation on claims to four years instead of 2 years. Based on the state records retention schedule, i.e. for race claims, an agency may want to retain those records for an extended period.

Rules 24 / Rules for Classified Employees. This Rule was split into the following five (5) topic-specific Rules to make for users to readily locate the information they are seeking. The Rules are as follows:

478-1-.24 / Working Test and Permanent Status for Classified Employees. Classified employees began a new Working Test every time they were promoted into a higher classified position to prove their capability or when a working test period is part of an agreement to dispose of an adverse action appeal. Over time the law changed, and classified employees no longer served a working test.

1. Revised context for the rule and removed non-valid provisions working tests following interdepartmental transfer.
2. **Page 2, sec. (e) / Applicability.** Additional guidance to promote compliance with the Uniformed Services Employment and Reemployment Rights Act.
3. **Page 2, sec. (3) / Midpoint Review.** Additional guidance to promote compliance with legal requirement for conducting a performance review midway through the working test period.
4. Clarified employment options for employees who will not attain permanent status following their working test.

478-1-.25 / Reduction in Force for Classified Employees. Reduction-in-Force refers to the layoff of staff and, more recently to furlough and salary reduction actions taken when fiscally necessary. Increasing furloughs and salary reductions outlines the procedural conditions and formatting.

1. Consolidated in one place a list of three actions (separation, furlough, and salary reduction) that can be taken as a "Reduction in Force."
2. Identifying staff that will be affected by RIF to foster clear understanding.
3. Deleted outdated provisions that were removed from the Georgia Code.
4. Two substantive changes to reflect the changes in the law:
 - a) Delete the provision of classified employees on working test falling into interdepartmental transfer;
 - b) Change regarding legislative notification when twenty-five (25) or more employees will be laid off.
5. **Pages 3-4, Sec. 8 / Retention Credits.** Updated information regarding the Retention credits to reflect the current performance management system rating.

478-1-.26 / Adverse Actions for Classified Employees. Adverse action is a term used for four disciplinary actions: Suspension without Pay; Demotion; Disciplinary Salary Reduction; and Dismissal. On page 1 of this Rule, streamlined a specific list of charges for which Adverse Actions against a classified employee may be taken.

1. The Interagency Committee proposes the removal of two reasons for Adverse Actions, as follows:
 - "failure to process performance appraisals in a timely manner" since it is sufficiently covered in provision 3(a).
 - "political activity in violation of 478-1-.08" since it is sufficiently covered in 3(d) and Forfeiture of Employment.
2. **Page 2, sec. (b) / Disciplinary Salary Reduction.** Added a requirement for an employee's salary following disciplinary salary reduction, to remain within the specified range for the job. This change supports the integrity of the employee's job classification.

3. **Page 2, sec. (c) / Demotion.** Clarifies that an employee retains classified status following disciplinary demotion.
4. **Page 3, sec. 5 / Notice of Proposed Adverse Action.**
 - The agency must give a classified employee written notice of any proposed adverse action at least fifteen (15) calendar days prior to the effective date of the adverse action; except for an emergency situation set forth in provision (11) of this Rule.
 - The effective date of the adverse action which must be at least fifteen (15) calendar days prior to the effective date of adverse action after the proposed notice is presented to, received by the employee, or properly mailed.
5. **Page 3, sec. 6 / Employee Response Procedure.**
 - The employee must respond within ten (10) calendar days from the date the notice of proposed action is received.
6. **Page 4, sec. (e) (f) / Retention Credits.** Additional guidance for agency officials reviewing the internal employee appeals proposed for adverse action.
7. **Page 5, sec. 10 (b) / Employment Status During Notice Period.** Agency Appointed Authority is given flexibility to suspend an employee (via written notice) with pay during the fifteen (15) day notice period of adverse action if in the best interest of the agency is returned to this Rule.
8. **Page 5-6, sec. 11 (a) (3) / Emergency Situations Resulting in Immediate Adverse Action.** Accommodate certain state laws that require immediate dismissals, i.e. inappropriate use of the state purchasing card. Agencies were given the authority to take immediate adverse action without providing a 15-day notice period to the employee when immediate dismissal is required by law.

478-1-.27 / Appeals and Hearings for Classified Employees. This is a rule that the Board will occasionally use when hearing appeals for classified employees.

1. **Page 2, sec. (e) (1) / Waiver of Appeal Rights.** This provision was in the Adverse Action section of the large Rule 24 and was added as a basis for waiving appeal rights. It is incorporated here for users to find all relevant information in one location rather than having to search another Rule.
2. **Page 2, sec. (f) / Timely Appeals are modified.** / In a recent court ruling (the “Dillard” case based on a voluntary separation), there is an indication that full hearing should be offered for all classified employees. This provision has been revised to reflect that ruling. An appeal based only on the written record will occur only upon agreement of all parties involved.

Note: The Office of State Administrative Hearings was contacted about this proposed change and they indicated that it would not adversely impact their work load because of few classified employee appeals. This rule is updated to allow the employee an opportunity for a full hearing on any type of classified employee appeal; and allow for review only on the written record if agreed upon by all parties involved.

3. **Page 3, sec. (5) (1) / Appeals Alleging Unlawful Discrimination.** This provision addresses a Stay in the hearing process where an employee has a review by the Georgia Commission on Equal Opportunity. For consistency, we propose to add a ten (10) calendar day time frame for requesting to lift a stay of the hearing process following the disposition by GCEO. The ten (10) calendar days are consistent with the initial time frame to file an appeal.
4. **Page 4 / Appeals Alleging Fraud, Waste, or Abuse.** A similar timeframe was added for a request to lift a Stay of the hearing process while an employee addresses “whistleblowing” claims of fraud, waste or abuse through Superior Court proceeding. OSAH fully consented to the change in this provision since previously there was no time frame identified.

The State Personnel Board hearing process that is being used should remain the same; with exception of the timeframes for requesting reinstatement of the hearing processes after a Stay for the two types of external processes. There are no other substantive changes.

478-1-.28 / Voluntary Separations for Classified Employees. Addresses separation actions that are considered “voluntary” separations, rather than disciplinary separations for classified employees.

1. **Presumptive Resignation** / When an employee is absent for five (5) work days or the equivalent of a work week without authorization. This allows the agency to presume that the employee has resigned.
2. **Failure to Return from a Leave of Absence.** When an employee does not return to work as scheduled and has not received an approval for a leave extension. To promote compliance with various employment laws, a reminder was added in this action that an agency must meet any obligations, i.e. FMLA, military leave, etc. for separating an employee for failure to return from leave of absence.
3. **Suitable Vacancy Not Available.** There is not a suitable position available for an employee at the end of a “contingent leave of absence” Upon request of contingent leave of absence; an employee should be notified about what suitable vacancy might be available at the conclusion of the leave.
4. **Forfeiture of Employment.** The Employee does not maintain a required license, registration, or certificate; engaged in conflicting employment; engaged in prohibitive political activity; or, made a material false statement on employment material, i.e. job history or educational credentials that impact the hiring decision.

Mr. Joseph requested further guidance and discussion regarding the issue of “prohibitive political activities” to avoid misinterpretation and potential abuse in that area. Ms. Townsend explained the Committee’s goal to further clarify this provision and to develop a Policy Advisory for the state that identifies ‘allowed’ and ‘not allowed’ political activities in plain language as a basis for our rule provision.

5. A fifth provision called “**Release from Employment**” was removed because it was sufficiently similar to the Presumptive Resignation category.

Ms. Townsend concluded the presentation by reiterating that there was no plan in the future to bring this volume of Rule changes to the Board. She requested the Board’s approval to post the proposed changes for the 30-day Public Comment period. The Committee will review any comments and present final recommendations for the Board’s approval at the June 2014 SPB meeting.

These efforts placed in Rules revisions are dedicated to the state’s workforce. Due diligence is to promote consistency and standards across the board. The rules presented today may pertain largely to classified employees (7% state’s workforce). However, future rules revisions is applicable to the states workforce as a whole.

The Interagency Committee and HRA staff was commended by the Board for their hard effort and precise presentation of the proposed Rules modifications.

Motion to Approve the Release of the SPB Rules Modifications for Public Commentary:

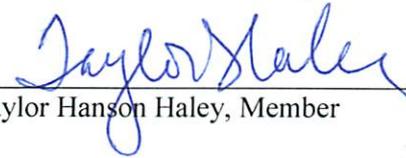
Mr. Joseph presented a Motion to open the Public Comment period for consideration of the proposed changes to the SPB Rules presented today. It was Moved by Ms. Haley, seconded by Mr. Rogers and the Motion carried unanimously.

With no further business, Mr. Joseph made a Motion for adjournment. The Motion to officially adjourn the meeting was Moved by Ms. Haley, seconded by Ms. Johnson and carried unanimously.

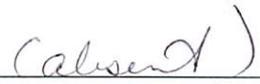
READ AND APPROVED ON 13th of May, 2014 by:

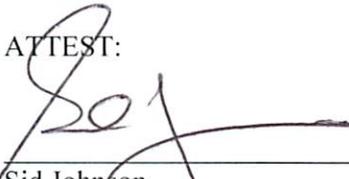

Robert R. Joseph, Chair


Jewelle Johnson, Vice Chair


Taylor Hanson Haley, Member


Jim Rogers, Member


Paul Babaz, Member

ATTEST:

Sid Johnson
Executive Secretary
State Personnel Board