

Minutes
Personnel Policy Board
November 6, 2015
9:30 a.m.

Members Present: Ted Smith, Chair; Susan Hoffer; Hon. James Hovey; Petra Mandigo Hulm; Hon. Lisa Fair McEvers; Carolyn Probst; and Ross Munns

Substitute Members: Hon. Gail Hagerty; and Sally Holewa, ex officio.

Others Present: Amy Klein, Staff
Scott Johnson, Guest
Don Wolf, Guest
Renee Barnaby, Minutes

Chair Smith called the meeting to order at 9:30 a.m.

Minutes

Petra Hulm and Ross Munns noted some of typographical corrections to the August 28, 2015 minutes. Mr. Munns also indicated he wanted to insert a couple of comments he made at the August meeting into the minutes. **It was moved by Justice McEvers, seconded by Petra Hulm, to table August 28, 2015 minutes and readdress them at the next meeting. The motion carried.**

Comments to Administrative Rule 33

The proposed election changes to section 3 of Administrative Rule 33 were sent out to employees for comment. Chair Smith noted the comments focused on the definition of days and would like it to be 10 working days rather than just 10 days. Justice McEvers said there were also comments in favor of write-in candidates. Petra Hulm recalls at the February and June meetings, Sally Holewa stated the importance of declaring a candidacy before an election.

It was moved by Justice McEvers, seconded by Judge Hovey, to amend section 3.C. and D. to insert the word “working” as follows:

“C. Employees must be given a minimum of 10 working days to submit candidacy to the Human Resource Director.

D. The election period must be a minimum of 10 working days.”

Ross Munns said additionally, there was a comment asking for a five-day advance notice of a candidacy period, which would preclude the 10-day increment.

In response to a question from Mr. Munns asking if all elections take place at the end of the year, Justice McEvers said typically that is when terms expire, however, there may be an instance when someone resigns in the middle of their term and an election would be held. Mr. Munns

then believes it is pertinent to request a five-day grace period because not all elections will be held in December. Chair Smith suggested making the candidacy and election period 15 days instead of adding a whole other step into the process.

It was moved by Justice McEvers, seconded by Ross Munns, to amend the motion by changing the number of working days from 10 to 15 in section 3.C. and D.

Judge Hovey noted that by changing it to 15 working days for the candidacy and the election, it will be close to two months before a member can be replaced.

The amendment to change it from 10 working days to 15 working days carried with one member voting no. The policy will be forwarded to the Supreme Court for consideration.

Legislative Changes Related to Family Sick Leave

Amy Klein recalled at the May 2015 meeting, the Board tabled the proposed changes to the family sick leave policy until the Executive Branch acted on the legislative changes. The first piece of legislation allows for the use of six weeks for bonding, which we already have in our policies. The second piece of legislation takes the 80 hours and additional 10% of sick leave that an employee may take for a parent, spouse or child with a serious health condition and replaces it with 480 hours of an employee's sick leave to care for a parent, spouse or child with a serious health condition. Ms. Klein said she drafted proposed language adding the 480 hours to the sick leave policy. The Executive Branch only allows leave for a parent, spouse and child. Ms. Klein said she included any family member covered by FMLA, which would include parent, spouse, child, grandchild, sibling, domestic partner, qualifying exigency, and care for a covered service member. Because the court system's sick leave policy includes more eligible family members than are covered by FMLA, the additional 10% of sick leave is not proposed to be eliminated. She noted, however, the Executive Branch did eliminate the additional 10%. Ms. Klein said there is also a third piece of legislation allowing 40 hours of sick leave per calendar year to be used for situations of domestic violence, sex offense, stalking or terrorizing.

Chair Smith noted discussion will be broken up into two sections, family sick leave and domestic violence.

Ross Munns suggested adding the clause "with the approval from an employee's appointing authority" as stated in section D.3.b. to the beginning of D.3.c. He said as it is currently written, it may be misconstrued to be a given. Ms. Hulm noted that under FMLA, the employee has a right to the leave. Ms. Klein added the doctor indicates how much leave the employee needs.

Ms. Hulm stated that the court system allows 16 weeks for FMLA so she suggested increasing the total number of hours to 640 so that the full 16 weeks are covered.

It was moved by Petra Hulm, seconded by Justice McEvers, to adopt the provisions under section D.3.c. with the amendment that the 480 hours be changed to 640 hours. The motion

carried and will be sent to employees for comment.

With regard to the leave for domestic violence situations, Ms. Klein indicated that the proposed language follows the Century Code.

Judge Hovey suggested the word “to:” be added at the end of the first paragraph under section D.5. He noted that section D. 5.f. also needs to be adjusted.

Under the first sentence of section D.5. where it states “an employee at the discretion of the employee’s supervisor may use 40 hours...”, Chair Smith noted that the statute does not make that discretionary. He said the statute says “shall” and the only discretionary part is it may be limited to 40 hours per calendar year. Justice McEvers stated that more than 40 hours could be used at the discretion of the supervisor. She also noted that the phrase “caused by domestic violence, a sex offense, stalking or terrorizing” is repeated several times throughout the policy and suggested instead the phrase be added to an introductory paragraph. It was consensus of the Board to have Ms. Klein redraft the section similar to the Executive Branch policy and make the leave mandatory rather than discretionary.

In response to a question from Susan Hoffer asking how to verify the underlying act occurred, Justice McEvers responded in order to seek legal or law enforcement assistance, we would not be able to verify that it occurred until after they had been allowed to use the policy to get the assistance so we may not be able to require verification until after the fact, in which case it would need to be added to the policy.

Mr. Munns said it is up to the employee to know and be aware of the policy, then approach the supervisor in order to access the policy. Scott Johnson added if it is suspected that an employee has abused the policy or there was an issue with truthfulness, there are other policies that apply. Carolyn Probst stated if an employee is going to access these benefits, they should be bringing forward at least a minimal amount of information.

It was the consensus of the Board to send the changes to family sick leave out for comment. Ms. Klein will redraft the portion concerning domestic violence and bring it back to the next meeting.

Compensation Study Proposals

Funeral & Burial Leave

Amy Klein said the compensation study recommended adding two additional days for funeral and burial leave, for a total of five days (40 hours). Currently, the court system allows three days (24 hours) and the market is five days. She indicated that the Executive Branch allows three days, and there are no specific provisions in the Century Code.

Justice McEvers noted that in some of our other policies, the definition of family has been expanded and suggested this policy be reviewed for expansion as well. She said for example

someone could go to their stepchild's funeral but not their step grandchild's funeral. Ms. Klein responded that this policy is the most broad and noted that step grandchild is not in any of the other policies.

Judge Hovey indicated that under section C., the policy does allow someone to request annual leave for someone not already covered and suggested the number of hours be left at 24.

Ross Munns stated he is in favor of the 40 hours as it may take more than three days especially if the employee is the primary person in charge of making the arrangements or if the family member is out of state. He noted it is up to 40 hours and requires communication with the supervisor.

Chair Smith recalled in the past that some Board members mentioned problems with some employees automatically assuming they get whatever is listed in the policy and abusing it.

Justice McEvers said if the court system is ahead of market on annual leave, then we have the flexibility built in to address the market. Ms. Klein indicated the court system is approximately eight days over market at five to 10 years and slightly over market at 25 years.

In response to a question from Justice McEvers asking if employees have made any comments concerning the length of our bereavement, Ms. Klein responded every now and then someone will comment, especially when it is a child.

It was moved by Ross Munns, seconded by Susan Hoffer, to adopt the change to increase the leave to up to 40 working hours.

Justice McEvers suggested if necessary, language could be added stating it is up to the supervisor's discretion.

Ms. Klein said typically, the employee takes all three days. It places a burden on supervisors to tell someone that one particular person is not as important as another and give them leave for one person and not the other.

Judge McEvers noted this policy is only addressing funeral and burial leave and does not actually address bereavement.

A roll call vote was taken. The motion carried with four voting in favor of the motion and two voting against the motion. The policy will be sent out to employees for comment.

Sick Leave

Amy Klein said the compensation study recommended increasing the sick leave especially for longer tenured employees. Ms. Klein drafted two options. Option 1 more closely follows the annual leave schedule, and Option 2 follows the market with an increase towards the longer

tenured service. She said Century Code 54-06-14 addresses annual and sick leave for employees. Currently, an employee in the court system accrues 12 hours per month after 24 months of service, while those in the Executive Branch only accrue 8 hours.

Justice McEvers stated the Century Code states sick leave for an employee must be within a range of one to one and half days. The court system is currently within the range but the new proposals would be in violation. She said despite what the market shows, it is her experience that new and younger employees with children tend to need/use sick leave rather than the older employees.

It was moved by Petra Hulm, seconded by Carolyn Probst, to take no action on the sick leave policy and leave it as it is currently written. The motion carried.

Technology Supplement I Positions

The compensation study recommended eliminating Supplement I and adjusting the salary grade for all positions in the supplement to better align those positions with market.

Petra Hulm said after running the numbers, she is unsure the positions will benefit as they will be receiving less money, at least initially. She said she spoke with the director of technology and he said his employees generally would like to get rid of Supplement I and just raise the salaries. However, we do not want to short them.

It was the consensus of the Board to table the agenda item to allow Ms. Klein review the proposal

Additional Grades

The compensation study noted that since the 50th percentile of the market for the directors of human resources, technology and finance are above the midpoint of pay grade 23, it was recommended two additional pay grades (24 and 25) be created. Chair Smith drew attention to the comments received from an employee, which were distributed by email before the Board meeting.

Don Wolf, Director of Finance, stated he was attending the meeting to express concerns about the budget and maintaining it. No additional funding was included in the current biennium budget to implement the salary study recommendations. Currently, with only three months of data, it is too early to tell if there will be additional funding in the salary and wages line item by the end of the biennium. He suggested waiting until there is at least a year's worth of data to get a better understanding of where we are at in the budget. He requested the Board hold off on any decisions that may have a substantial fiscal impact and suggested building the recommendations into next biennium's budget.

Justice McEvers recalled in 1991, in the middle of the biennium, the governor asked the courts to turn back 4½% of the entire budget. Since it was the second half of the biennium, it was a 9%

cut in one year. No positions were filled and some positions had to be cut to part time.

Justice McEvers said she does not have any objection to elevating some of the positions, but asked the Board to keep in mind what the end product is at the Supreme Court and to take the employee's comments into consideration concerning the director of central legal. The market study focuses on business and the court's business is law, not money. She said it is very important that we are smarter about our own organization's needs and not leave out any key positions.

Ross Munns stated that many positions were left out of the study because they did not have conclusive data, which is one of the major problems with the compensation study. He said as Mr. Wolf stated, the money may not be available this biennium, so now is the time to review the system in its entirety and build it into the next biennium's budget. He said he is not opposed to the creation of pay grades 24 and 25, but suggested an alternative might be to add step 12, which would alleviate the potential for compression. He also expressed the importance of reviewing those positions that did not have conclusive data from the study.

Petra Hulm stated the timing is bad considering the whole state budget situation. She said she is opposed to creating pay grade 24 because people will find a way to move into it. She recalled when the Bjorklund study was done, the people who are in pay grade 21 did not all fit in pay grade 21 and people in other grades did not necessarily fit in their grades either. A decision was made that all the directors and all the attorneys would be in the same pay grade. The court system is here to adjudicate cases so she is not in favor of saying the administrative side is more important than the adjudicative side.

Carolyn Probst suggested taking a more holistic approach and reviewing all positions and, in particular, those that were not considered in the study. She noted that creating more steps would affect everybody equally versus a few positions. She said she is in favor of pursuing the information and coming up with better options as we move forward so the Board is ready to make the decisions by the middle of the biennium.

Scott Johnson noted that the compensation study only did part of the work and suggested the Board might consider reviewing the classification piece as well.

Susan Hoffer said throughout the whole project, her biggest concern has been with the lower pay grades and classifications and getting those positions up to market. She said even though the study did not gather five matches on some of the positions, if one category in pay grade 4 was able to get matched and it was determined under market, can assumptions be made that the rest of the positions in pay grade 4 are under market?

Ms. Hulm stated that unfortunately some of the data received on the lower pay grades we were most concerned with suggested we should lower the salaries. She said with regard to the higher pay grades, she is uncertain any market data helps us because during the last study, there was a

conscious decision to put positions in a group that did not necessarily fit into the group.

Ms. Klein said technically if a benchmark position is shown to be out of market, the ultimate goal is to move the whole group in that pay grade. She believes part of the difficulty is the pay ranges are off. Some of the ranges are 3% apart and while others are 10% apart.

Justice McEvers stated the study showed for the most part that the court system is on market or close to market, and by the time we act on this, the market may have changed. The study was done before the oil slow down so if it were done again today, we might have a different outcome.

It was the consensus of the Board to table the discussion on adding the additional grades as well as reviewing those positions recommended for market adjustment (next item on the agenda). The Board requested Ms. Klein gather financial data on the impact of adding additional steps to the budget and well as the cost to adding additional pay grades.

Chair Smith noted that when the issue is revisited, it is important that a face-to-face meeting be held. It is difficult to have adequate discussion with so many different sites participating. Justice McEvers also noted it is equally important to not only have all Board members present, but staff as well as their comments are very helpful.

Career Ladder Positions

Amy Klein presented three options to the Board addressing salaries for the career ladder positions in pay grades 1 through 6. Option A follows the recommendations for salary adjustments for career ladder I positions identified below market in the compensation study. Option B eliminates all career ladder I positions. The qualifications for the current career ladder II positions would become the new base requirement with the option to underfill a position if no qualified applicants applied. Applicants hired as an underfill would be paid a training wage with a longer introductory period. Option C eliminates all but the top three steps in pay grades 1 through 6 in an effort to bring the starting pay closer to the career ladder II positions. Ms. Klein is recommending Option B.

In response to a question asking which option the state court administrator favored, Ms. Klein said Ms. Holewa was neutral. Chair Smith added he, too, spoke with Ms. Holewa, and she did not have an objection to Option B because it gave us a little more flexibility.

Ms. Klein said based on the July 2015 salary plan, the estimate and total annual cost to implement Option B is \$268,675. Currently, there are 63 deputy II positions, and she can verify that 34 deputy clerks career ladder to a II. She said of the 34, 47% career ladder in 6 months, 6% in 12 months, for a total of 53% in one year. She said the total annual cost would need to be adjusted 3% for the July 2016 salaries.

Petra Hulm said almost everyone hired in her office has had to take a pay cut, which has been a big decision for that person. She is unsure how well Option B would work in her office because

the years of experience get so large. At the supreme court level, three years of experience are required before advancing to a II.

Ross Munns said in terms of the district court level, most everyone hired has taken a significant pay cut from where they came from with the hopes of moving at the six month interval, which can lead to some loose interpretation of what qualifies as experience. He said his supervisor would appreciate the ability to hire at a II. There are a lot of people that do not even apply because they are not willing to step back for six months. This would give us the ability to hire very qualified employees.

Susan Hoffer said her concern is that the entry salary into these lower end positions is insufficient for people to meet their needs so they are having to work multiple jobs. However, she noted there is a big difference in skills between the entry level position and a level II position. She said manipulation of that six month qualification to move them from a I to a II is not necessarily an equitable way to address the problem.

Judge Hovey questioned if we would be creating a morale issue by hiring people at a II right at the start while others have had to move through the system. Mr. Munns suggested setting an implementation date in the future so that everyone who is currently a I would advance through the process under the current rules.

Carolyn Probst noted that if Option B is chosen and the person hired lacks the two years experience, they would be hired at an underfill, which is two steps below. Even though that person will be hired at a higher salary than what somebody in the past was hired at, they are still going to have to wait two years before they get to step 1. She said she believes the pay grade exception has significantly helped the Williston and Watford City offices.

It was moved by Ross Munns, seconded by Carolyn Probst, to adopt Option B, to eliminate the ladder I positions and retitle the IIs and the IIIs; amend Policies 181 and 151; amend the definitions page as proposed; and eliminate the court reporter underfill supplement.

With regard to Policy 181 B.1., Ms. Hulm questioned why the hiring authority has to seek approval from the state court administrator rather than the hiring authority. She also noted that the proposed language under B.2. states the underfill must meet the minimum qualifications within 24 months, but in the supreme court clerk's office, it would be 36 months.

Ms. Klein stated the reason it sought approval from the state court administrator is to ensure that they first cannot fill the position with the minimum requirements. She said changing it to the appointing authority would work fine. She then noted that the draft language lists 24 months which means the Supreme Court deputy clerk position would require one year of experience to underfill.

It was moved by Ross Munns, seconded by Petra Hulm, to amend the motion to modify

Policy 181 B.1. to read as follows: “The hiring authority may seek approval from the appointing authority to underfill a position if they are unable to find qualified candidates who meet the minimum qualifications of the position.” The motion carried.

The motion carried to adopt Option B along with the changes to the appropriate policies. It was noted that if the Supreme Court approves Option B, the classifications referring to the career ladder positions will need to be modified.

Geographic Pay Differentials

The compensation study recommended that the court system consider a geographic pay differential for oil impacted areas.

Carolyn Probst said with the policies, the salary exception and rental assistance currently in place, she suggested taking no action at this time and the Board continue to monitor the situation.

It was the consensus of the Board to take no action at this time.

Other Business

Chair Smith said with the retention and recruitment bonuses being in the news, someone had requested he ask if the court had any policies or plans for anything similar. Justice McEvers responded that she is not aware of anything set aside in the budget.

Chair Smith stated that Judge Hagerty is term limiting off the Board, and Ross Munns and Justice McEvers are up for reelection and reappointment, respectively. He said one of the agenda items at the next meeting will be to elect a new chair and vice chair for the Board.

Meeting adjourned.