

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
Board Chair

Kristin F. Rozansky
Board Director

State Personnel Board
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Meeting Minutes November 20, 2007

The State Personnel Board met in public session on Tuesday, November 20, 2007, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at 9:00 a.m. Board Members Roberto Corrada, Rich Djokic, Dana Shea-Reid, and John Zakhem were present in person. Board Member Robert Thompson arrived at 9:09 a.m.

Kristin F. Rozansky, Board Director; Assistant Attorney General Roxane Baca, Board Counsel; and Jane Sprague, General Professional III, were also present in person.

I. REPORT OF RICH GONZALES, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])

Mr. Gonzales gave a report to the Board, stating that DPA is conducting "Nuts and Bolts" training for all of DPA's supervisors. Regarding the Executive Order on Authorizing Partnership Agreement with State Employees, a copy of which was provided to Board members, Mr. Gonzales emphasized that the order does not change the status quo, but may mark the beginning of a long-term relationship with labor to make the state's business more effective, which would be a boon to the citizens of Colorado. He stated that a component of partnership with employees is an endeavor to take input from employees and do something with it, which is also a goal of the town hall meetings scheduled throughout the state. He also expressed the view that the newly adopted DPA Access Protocol protects the interests of DPA, and that the dues check-off on an employee's paycheck for labor association membership may be ready for introduction.

Mr. Corrada raised the issue of employees being discouraged about joining a labor association as being a violation of the Fair Labor Practice Act. Mr. Gonzales responded that such an issue could be appealed to one of two neutral bodies: (1) the Governor's designee, a negotiator; or (2) a neutral party to render decisions. He added that the Executive Order was introduced to a broad

perspective of organizations: CFPE, AFSCME, CAPE/SEIU, CWA, Teamsters, and Troopers, among others. Mr. Corrada also stated that regarding the arbitration provision, there was nothing within the Board's jurisdiction. Finally, Mr. Corrada asked why it was decided to require an employee organization to collect 30% of the affected employees' signatures in order to intervene in an election, as the norm was 10%. Mr. Gonzales responded that the employee organizations had reviewed that clause and had not objected to it. Director Rozansky stated that the language in the Executive Order states that none of the matters within the Board's jurisdiction would be within the scope of those agreements. Mr. Corrada replied that employees can contractually agree to anything they want, but there are issues with which the Board is going to have to deal. Mr. Zakhem stated that he hopes the Board is going to be involved in any further developments regarding the personnel system; Mr. Gonzales assured the Board that he will keep it informed of any developments.

II. REQUESTS FOR RESIDENCY WAIVERS

A. November 1, 2007 Report on Residency Waivers

Director Rozansky reported she denied a residency waiver request from the Department of Health Care Policy and Financing for the position of Deputy Executive Director and Medicaid Director, finding that while the agency demonstrated the position requires special skills and qualifications, it did not show an inadequate in-state pool and provided no information on any training from within. Seven persons met the minimum qualifications, 5 tested, and 4 were referred for an interview; therefore, there was an inadequate in-state pool. However, the agency found that the qualified applicants lacked the necessary communication skills and therefore, believed there was an inadequate in-state pool. The Director stated that if communication skills are a necessary component of the position, then the agency should test for communication skills prior to receiving a referral list.

III. PENDING MATTERS

There were no pending matters before the Board this month.

IV. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES ON APPEAL TO THE STATE PERSONNEL BOARD

A. Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089 (June 27, 2007).

Director Rozansky recused herself from participation in the discussion of this matter. Board Counsel Baca provided the summary of the case and called for the vote in lieu of the Director.

Mr. Zakhem moved to strike as untimely the Request for Oral Argument submitted by counsel for Ms. Kirkmeyer to the Board on November 14, 2007, and Respondent's Response to Complainant's Request for Oral Argument, received by the Board on November 16, 2007, pursuant to Board Rule 8-51(A), and to adopt the Order of Dismissal of the Administrative Law Judge. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

V. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES TO GRANT OR DENY PETITIONS FOR HEARING

A. Barbara Pridemore v. Department of Public Health & Environment, State Personnel Board case number 2007G073.

As a preliminary matter, Mr. Thompson stated that some concern had been raised regarding the fact that Teresa Zoltanski (the attorney for Complainant in the Pridemore case) signed a Certificate of Mailing on a brief in which Mr. Thompson is the attorney of record for a case in the Court of Appeals. Mr. Thompson said that the signing of the Certificate of Mailing by Ms. Zoltanski is not representative of a professional relationship between himself and Ms. Zoltanski; he does not know anything about the instant matter, Pridemore, or any other case in which Ms. Zoltanski is the attorney of record; he has decided not to recuse himself from voting in this matter; and the case in front of the Court of Appeals, Maggard, was before the Board in March 2007 before he was elected to the Board.

Mr. Zakhem moved to strike Complainant's Objection to Preliminary Recommendation of ALJ, and Request for a Hearing, Without Limiting the Hearing Issues; Respondent's response thereto; and Complainant's Request for Oral Argument from the record to adopt the Preliminary Recommendation of the Administrative Law Judge and to grant the petition for hearing solely on the issue of whether Respondent violated its internal grievance procedure, "Professional Conduct." Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

B. Eric Gillespie v. Department of Labor & Employment, Division of Oil & Public Safety, State Personnel Board case number 2007G096(C).

Mr. Corrada moved to adopt the Preliminary Recommendation of the

Administrative Law Judge and grant the petition for hearing. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

VI. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES

- A. Jerry Autenrieth v. Department of Labor and Employment, Office of Unemployment Insurance, State Personnel Board case number 2007B094 (October 11, 2007).
- B. Scott Horak v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2007B071 (October 18, 2007).

VII. REVIEW OF THE MINUTES FROM THE OCTOBER 16, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the October 16, 2007 meeting as submitted. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 16, 2007 PUBLIC MEETING:

- A. Joseph MacDonald v. Department of Transportation, State Personnel Board case number 2007B030.

The Board voted to deny the Motion to Stay.

- B. Edward Lawrence Donaldson v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2006B051(C).

The Board voted to adopt the findings of fact and conclusions of law numbers 1 and 4 of the Initial Decision of the Administrative Law Judge and to reverse or modify conclusions of law numbers 2 and 3.

- C. Daniel Schaefer v. Regents of the University of Colorado, University of Colorado at Boulder, Department of Public Safety, University Police Department, State Personnel Board case number 2008G014.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the hearing.

- D. Suzanne Belanger v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2007G093.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the hearing.

IX. REPORT OF DAVID KAYE, DIRECTOR OF THE DIVISION OF HUMAN RESOURCES, DPA

Joi Simpson addressed the Board regarding the State of Colorado Personal Leave Policy, stating that the goal is to simplify leave policies for employees. She said that the first meeting to introduce the policy was held in Grand Junction and she addressed concerns at that time; in addition, there is a meeting scheduled in December and some financial pieces are being worked out. Ms. Simpson stated that payouts under the new policy are, for the short term, going to increase and can be done through vacancy savings. She wants to give CIO's lead-time, and thus is scheduling a rulemaking hearing for January 2008. Mr. Djokic asked about transitioning employees into what he termed "a culture shift." Ms. Simpson said that a reserve is created with all currently accrued sick leave going into "the pot," and that, under the proposed new rule, it would take 2 years to get to the leave maximum. She also said that new employees have stated they would like to have more discretionary leave. Her job is to teach employees and managers how to manage leave, and to take leave because they need to take leave, with the philosophy that employees become more productive after taking leave. Ms. Shea-Reid expressed her opinion that employees need to take leave. Ms. Simpson's plan is to do more education for supervisors and employees regarding this new policy.

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Annual Whistleblower Report to the Governor

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that she has changed the format of the Annual Whistleblower Report to include whether or not there was a violation of the statute. In addition, she reported that she and the Administrative Law Judges took the annual Employment Law Update Continuing Legal Education (CLE), ALJs DeForest and Farrell are taking the online Evidence Course from the National Judicial College (NJC), and she is

teaching the Progressive Discipline portion of the "Nuts and Bolts" training which DPA is requiring all of its supervisors to take.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Teresa Zoltanski, in response to Mr. Corrada's inquiries, stated that CFPE objected to the 30% figure in the Executive Order relating to the level of signatures required for an employee organization to intervene in an election. In response to Ms. Shea-Reid, Ms. Zoltanski stated that employees should be encouraged to take leave and not be disciplined afterwards for taking it.

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the October 16, 2007 Executive Session
- C. Other Business

Following Executive Session, the Board went back into Open Session. Mr. Djokic asked if there was a motion to seek a formal Attorney General Opinion with respect to the effect on Board actions in the event a member of the Board represents parties in proceedings which are before the Board or involving the Board as a party in interest, including the issue of potential waiver of the deliberative process subsequent to the member of the Board coming onto the Board and including Ethics Opinion 97 with respect to obligations and responsibilities of attorney members of the Board and staff who may be attorneys. Mr. Corrada so moved; Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic. Mr. Thompson abstained from voting.

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APPROVED THIS 18th DAY OF DECEMBER, 2007.

Rich Djokic, Board Chair

Roberto Corrada, Member

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member