

State of Colorado



Bill Ritter, Jr.
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Meeting Minutes December 18, 2007

The State Personnel Board met in public session on Tuesday, December 18, 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 9:01 a.m. Board Members Rich Djokic, Dana Shea-Reid, and Robert Thompson were present in person. Board Member Roberto Corrada was present via teleconferencing. Board Member John Zakhem arrived at 9:12 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 on several topics. Regarding the Executive Order on Authorizing Partnership Agreements with State Employees, he stated that there have been meetings with Human Resources Directors and Executive Directors to educate them on the Executive Order and that the first employee organization election would be occurring among the state patrol officers. Mr. Gonzales stressed that the Executive Order would not change the total compensation process, but there is more communication among groups of employees. Mr. Corrada asked if the Executive Order would be modified to comply with employees' right to strike; Mr. Gonzales stated that employees' right to strike and its ramifications on the Executive Order were being discussed.

Other activities Mr. Gonzales reported on include the personal leave policy, for which quite a few meetings have been held but no rulemaking date has been set, and the mandatory supervisory training, "Nuts and Bolts," which is ongoing for all DPA supervisors and managers. He stated that the great relationship with the Board is continuing, thanks to Director Rozansky, who is a participant in the supervisory training. With regard to the grievance process, Mr. Gonzales stated that research is being done in the vein of possibly broadening the current

parameters under which a hearing may be granted by the Board. In addition, Mr. Gonzales believes the grievance process will be used more widely once confidence and trust in the system is established and there is no fear of retaliation. He cited the Ombuds program, C-SEAP, and the "Nuts and Bolts" supervisory training as vehicles through which employees may build trust in the grievance process.

II. REQUESTS FOR RESIDENCY WAIVERS

A. December 1, 2007 Report on Residency Waivers

Director Rozansky reported that the Department of Human Services withdrew its request for a residency waiver for the position of Speech Pathologist at Fort Logan Mental Health Institute, as the position was filled by an in-state resident. She granted a renewal of the residency waiver to the Department of Human Services for the positions of Rehabilitation Counselor Intern and Rehabilitation Counselor I, for which there has been a reduction in overall vacancies from 16 to 8. During the past year, the department has filled 34 vacancies, including 16 from out-of-state applicants and 18 from in-state applicants.

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

There were no Initial Decisions or other Final Orders of the Administrative Law Judges on appeal to the State Personnel Board this month.

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

A. Timothy A. Smelser v. Department of Corrections, State Personnel Board case number 2008G027.

Mr. Corrada moved to adopt the Amended Preliminary Recommendation 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, and Mr. Djokic. Mr. Zakhem was absent for this portion of the meeting.

B. Gary Mason v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2008G017.

Board Counsel Baca addressed Respondent's Motion to Recuse Board Member Robert Thompson. Mr. Thompson stated that he chose not to recuse and that he was no longer on the Maggard case as of November 26, 2007, as Vonda Hall had filed a Substitution of Counsel at the Court of Appeals and a Reply Brief. However, it was agreed among the remaining Board members that until the Court of Appeals enters an order removing Mr. Thompson from the Maggard case, he remains in the position of being an attorney in an adversarial role to the Department of Human Services as well as being a member of the State Personnel Board. Thus, Mr. Zakhem moved that the Board disqualify Mr. Thompson from voting on the Mason case. Mr. Corrada 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 voted in opposition to the motion.

Following the recusal of Mr. Thompson, Mr. Thompson left the meeting room so that the remaining Board members could discuss and vote on the Preliminary Recommendation of the Administrative Law Judge. Ms. Shea-Reid moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing solely on the issue of whether the Memorandum of Expectation issued to Complainant was a violation of the Whistleblower Act. 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. After the vote was taken, Mr. Thompson returned to the meeting room.

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

- A. Dane Branch v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2008B009 (November 26, 2007).

The Board did not vote to review the Initial Decision in this case *sua sponte*.

VII. REVIEW OF THE MINUTES FROM THE NOVEMBER 20, 2007 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the November 20, 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 NOVEMBER 20, 2007 PUBLIC MEETING:

- A. Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089.

The Board voted to strike the Request for Oral Argument and Respondent's Response to Complainant's Request for Oral Argument, and to adopt the Dismissal Order.

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

The Board voted 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; to adopt the Preliminary Recommendation of the Administrative Law Judge; and to grant the hearing solely on the issue of whether Respondent violated its internal grievance procedure, "Professional Conduct."

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

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

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

Building upon Mr. Gonzales' presentation, Mr. Kaye reported on the grievance audit being done by DPA/DHR, including the development of a comprehensive set of questions, data, and a metric about what DPA is trying to accomplish, addressing the formal versus informal steps in the process, trending information, and measurements as to whether the grievance process is working. Mr. Kaye also addressed the Executive Order, stating that he was working with the Governor's designee to make a decision as to who is a covered employee; the technical assistance that his group is drafting with regard to the new layoff rules, following the Continuing Legal Education (CLE) by the Board's Administrative Law Judges on December 11; the new personal leave policy, for which DHR has garnered feedback from 2000 employees; and total compensation and DPA's request for more funding for health, life and dental insurance premiums. Mr. Kaye further remarked that DPA/DHR is working on a frequently asked question (FAQ) document regarding partnership agreements.

X. ADMINISTRATIVE MATTERS & COMMENTS

- A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Mandate/Appeal Dismissed - Butler v. Department of Revenue, State Personnel Board case number 2007G029, Court of Appeals No. 2007CA1261
- Mandate/Order Affirmed - Robinson v. Regents of the University of Colorado, State Personnel Board case number 2005G008, Court of Appeals No. 2006CA1014

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that about 40 attorneys and HR Directors had attended the Board's CLE training by the ALJs on Layoff Rules on December 11, 2007; both ALJ DeForest and ALJ Farrell have completed the online evidence course offered by the National Judicial College; the Director has been involved in the ongoing "Nuts and Bolts" training for supervisors with more sessions planned this week; Andrea is back from maternity leave and will be full-time in January; the Director has been attending meetings with the Governor's Designee on the Executive Order on Partnership Agreements and has proposed that the Board's ALJs be used to mediate disputes arising during the negotiation of those partnership agreements, perhaps under a memorandum of understanding; and the Director has also been attending ongoing monthly meetings with employee organizations, including CAPE/SEIU, AFSCME and AFT (now known as Colorado Wins) and CFPE.

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

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the November 20, 2007 Executive Session
- C. Other Business

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APPROVED THIS 15th DAY OF JANUARY, 2008.

Rich Djokic, Board Chair

Roberto Corrada, Member

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member