

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
Board Chair

Kristin F. Rozansky
Board Director

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Meeting Minutes February 19, 2008

The State Personnel Board met in public session on Tuesday, February 19, 2008, 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 Rich Djokic, Dana Shea-Reid, Robert Thompson, and John Zakhem were present in person. Board Member Roberto Corrada was absent.

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, beginning with the Office of Information Technology (OIT) consolidation. Mr. Gonzales characterized the legislation relating to this consolidation as "bogged down" on communication issues and questions. He has invited OIT personnel to the Human Resource Directors forum to field questions on matters such as employee status and transfers, and asked for Director Rozansky's assistance and expertise on layoff rules. Director Rozansky stated that, with 1200 state employees being impacted by the consolidation, perhaps employees as well as supervisors need some training on the layoff rules.

Mr. Gonzales reported that the Nuts and Bolts supervisory training, which is a mandatory training for all supervisors at DPA, is just about complete. He wants to make sure that a tracking and feedback loop is in place to get information from those who have taken the training and to assess its efficacy. The next set of training, according to Mr. Gonzales, is sexual harassment training, which will be required training twice a year for all employees within DPA. As with the Nuts and Bolts supervisory training, he would like to pilot the training at DPA and push it out statewide.

Mr. Gonzales stated that DPA is preparing a Frequently Asked Questions (FAQ) document regarding partnerships with labor organizations that will take a "down the middle" approach and is based on all feedback and concerns about such organizations. Some of the topics to be covered include membership, benefits, dues check-off, and whether compensation will be a negotiated process.

Finally, with regard to the new personal leave policy, he stated that DPA is receiving data and input from employees as to how the new policy would affect them with regard to time and money. Also, he said that short-term disability (STD) leave has been reinserted (but the STD benefit was never eliminated). There is no budgetary impact, as any fiscal impact will be absorbed within existing resources.

II. REQUESTS FOR RESIDENCY WAIVERS

A. February 19, 2008 Report on Residency Waivers

Director Rozansky reported that she has granted a residency waiver request for the position of Therapist II - Speech Pathologist for the Department of Human Services, Grand Junction Regional Center. They have had no in-state applicants, and thus requested a waiver.

In addition, the Director reported that she and Ms. Sprague are preparing a report to the Board for March covering the last two years of residency waiver requests, including hiring results on residency waiver requests which have been granted.

III. PENDING MATTERS

A. Cases on Remand

Director Rozansky recused herself from the Bellio case and left the room before the discussion began.

1. Leo Bellio v. Department of Revenue, State Personnel Board case number 2005B052, Court of Appeals No. 06CA1377.

Following Board Counsel's summary of this matter, in compliance with the Court of Appeals' order, Mr. Zakhem moved to reverse the Administrative Law Judge (ALJ) with regard to Complainant's November 2004 disciplinary action, ordering Respondent to rescind the November 2004 disciplinary action in its entirety; to remand the matter the ALJ for a determination of attorney fees awarded to Complainant; and to order Board staff to set a briefing schedule on the issue of the award of attorney fees to Complainant. Ms. Shea-

Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

2. Sean McGuire v. Department of Revenue, State Personnel Board case number 2004G080(C), Court of Appeals No. 06CA1532.

In compliance with the Court of Appeals' order, Mr. Zakhem moved to remand the matter to the ALJ for an evidentiary hearing regarding Complainant's constitutional claim and whether Complainant was discriminated against on the basis of age or disability when he was not hired for the Criminal Investigator II position. Mr. Thompson seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

Director Rozansky returned to the Board meeting.

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

- A. Robert Todd Gonser v. Department of Transportation, State Personnel Board case number 2007B098 (September 4, 2007).

Mr. Zakhem moved to strike Complainant's Amended Briefing for Board Appeal for lack of timeliness. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic. Ms. Shea-Reid then moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge an Order of the Board. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

- B. Samuel Forte Jr. v. Department of Human Services, Spring Creek Youth Service Center, State Personnel Board case number 2008G016 (September 11, 2007).

On advice of counsel that the Court of Appeals has signed an order substituting counsel for Complainant on February 1, 2008, Mr. Zakhem moved to deny the Motion to Recuse Board Member Robert Thompson. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid and Mr.

Zakhem. Mr. Thompson abstained from voting, and Mr. Djokic voted in opposition to the motion.

In a second motion, Mr. Zakhem moved to grant Respondent's Motion to Strike the transcript of an October 23, 2007 unemployment insurance hearing. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

Finally, Mr. Zakhem moved to adopt the Dismissal Order and to make it an Order of the Board. Mr. Thompson seconded the motion. The motion passed on the affirmative vote of the following Board members: 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. John Redding v. Department of Natural Resources, Division of Water Resources, State Personnel Board case number 2008S002.

Ms. Shea-Reid moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Thompson seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

B. Kathleen J. Schultz v. Colorado State University, College of Agricultural Sciences, State Personnel Board case number 2008G029.

Mr. Thompson moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

C. Mathew Christensen v. Department of Public Health and Environment, State Personnel Board case number 2008G034.

Mr. Zakhem moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

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

There were no Initial Decisions or Other Final Orders of the Administrative Law Judges before the Board this month.

VII. REVIEW OF THE MINUTES FROM THE JANUARY 15, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the January 15, 2008 meeting as submitted. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Thompson, Mr. Zakhem and Mr. Djokic.

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 15, 2008 PUBLIC MEETING:

- A. Randy Pfaff v. Department of Corrections and State Personnel Board, Court of Appeals No. 05CA1937, State Personnel Board case number 2004B112(C).

In response to the January 3, 2008 Order Affirmed in Part, Reversed in Part and Case Remanded with Directions of the Court of Appeal and Mandate, the Board ordered the Initial Decision of the ALJ, with regard to Conclusions of Law 2 ("Complainant did not commit the acts upon which discipline was based") and 3 ("Respondent's demotion of Complainant was arbitrary and capricious and contrary to rule or law"), is affirmed, and Respondent is ordered to reinstate Complainant to the rank of Lieutenant retroactive to the date of demotion and to pay Complainant full back pay and benefits to the date of demotion. In addition, the Board ordered that, upon receipt of the record from the Court of Appeals, Board staff shall set a briefing schedule on the issue of reconsideration of the award of attorney fees and costs to Complainant, as mandated by the Court of Appeals.

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

There was no report from Mr. Kaye this month.

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that Jane Sprague and Andrea Woods have taken Adobe training for use in the Board's web postings; the Board is moving toward e-filing; and all members of staff are now members of the Colorado Bar Association (CBA) with access to a legal research engine, Casemaker.

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

Sean McGuire apologized to the Board for interrupting its discussion of his case. Scott Horak asked Ms. Shea-Reid if she was a licensed attorney and then posed the question to the Board: Are M&Ms an FDA-approved drug, a food or an EPA-regulated material? Mr. Djokic stated that such a matter was not within the Board's expertise.

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

Director Rozansky reported that she is tracking nine bills in the legislature relating to the state personnel system, four of which have been postponed indefinitely. One has been sent to the Governor for signature (HB 1020 - if plaintiff prevails, then will receive costs up to the date of plaintiff rejecting a settlement offer which is greater than the final award). Two bills are still pending in committee (SB 4 - establishing a working group to make recommendations on statutory and Board rule changes regarding the hiring of developmentally disabled employees; and HB 1115 - prohibiting retaliation against a judge, including threats and harassment). One bill has passed the Senate and is at the House (SB 75 - Rule Review bill which approves the rules passed by the Board in the past year). One has passed the House (HB 1189 - prohibiting a strike by state employees with questions of constitutionality) and is at the Senate. Mr. Zakhem asked the Board Director about the constitutionality of HB 1189. Director Rozansky stated she has not requested a constitutional analysis of this bill and that, in the past, the Board has remained neutral on legislation with no stand being taken. The Director usually monitors and provides fiscal notes, unless the Board directs her to do otherwise.

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the January 15, 2008 Executive Session

C. Other Business

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APPROVED THIS 18th DAY OF MARCH, 2008.

Rich Djokic, Board Chair

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member