

State of Colorado



Bill Ritter, Jr.
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Meeting Minutes May 20, 2008

The State Personnel Board met in public session on Tuesday, May 20, 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 9:04 a.m. Board members Roberto Corrada, Rich Djokic, Dana Shea-Reid, Robert Thompson, and John Zakhem were present in person.

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])

Jennifer Okes, Deputy Executive Director, reported to the Board on behalf of Rich Gonzales. Ms. Okes gave a brief presentation of several topics, as follows: 1) DPA is looking at the performance management system to see how evaluations are done; to consider alternatives, such as a pass/fail system; and to make the evaluation process more effective and efficient regarding the linkage between evaluations and performance; (2) DPA and the State Ombuds are interacting with agencies such as Human Services to resolve employee issues; (3) the affirmative action policy is currently undergoing review; (4) several payroll deductions have been approved by Mr. Gonzales, but have not been finalized; (5) the exemptions lists for elections under the Executive Order on Partnership Agreements have been finalized, with a demarcation made between labor and management; (6) State Ombuds Karen Schaefer has been doing outreach and working with DOC to strengthen its internal Ombuds program; (7) a committee has been formed to review DPA's policy regarding employee incentives.

Mr. Corrada asked for a clarification of how the demarcation between labor and management was determined. Ms. Okes responded that first level supervisors and employees below first level supervisors are automatically considered labor, and third level supervisors and employees above third level supervisors are

considered management. Second level supervisors are considered on a case-by-case basis.

II. REQUESTS FOR RESIDENCY WAIVERS

Director Rozansky reported that there are four residency waiver requests on which to report this month. The first is a renewal of a Department of Corrections waiver for the positions of Physician II and Mid-Level Providers, which the Director granted. The Department of Agriculture requested a residency waiver, but has not demonstrated any current recruitment efforts. The Department of Human Services requested a renewal of its residency waiver for Nurse I, II, III and Mid-level Providers. The Director is currently reviewing DHS' request. Finally, the Department of Natural Resources requested a residency waiver for Division Wildlife Manager I, II, and III, a request which is also currently being reviewed by the Director.

III. PENDING MATTERS

- A. Petition for Declaratory Order of Laura Taylor, State Personnel Board case number 2008D001.

After a discussion of the standards for petitions for declaratory orders, Board Rule 8-21 and how such petitions have historically been handled, Mr. Zakhem moved to remand the petition to an Administrative Law Judge to set the matter for hearing, including an order that Petitioner, the Department of Public Health and Environment, the Colorado Public Employees Retirement Association, and the Attorney General be noticed. 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.

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

- A. Norma Smith v. Department of Human Services, Division of Disability Determination, State Personnel Board case number 2007B090.

Mr. Zakhem moved to grant the Motion to Dismiss, contained in Respondent's Motion to Dismiss and in the Alternative, Answer Brief. Mr. Corrada seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Corrada, Ms. Shea-Reid, Mr. Thompson and Mr. Zakhem. Mr. Djokic voted in opposition to the motion.

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

There were no Preliminary Recommendations of the Administrative Law Judges before the Board this month.

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

- A. Kit Carver v. Department of Revenue, Motor Carrier Services Division, State Personnel Board case number 2008B033 (April 7, 2008).

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

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

Mr. Zakhem moved to approve the minutes of the April 15, 2008 meeting as submitted. Ms. Shea-Reid seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Shea-Reid, Mr. Zakhem and Mr. Djokic. Mr. Corrada and Mr. Thompson abstained from voting, as they were not present at the April 15, 2008 meeting.

VIII. ACKNOWLEDGMENTS

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

- A. John Conte v. Department of Natural Resources, Division of Wildlife, Design Engineering Section, State Personnel Board case number 2008G004.

The Board voted to grant the Motion to Strike and to adopt the Amended Dismissal Order and make it an Order of the Board.

- B. Pervaiz K. Sulehria v. Department of Corrections, Division of Adult Parole, Community Corrections and Youthful Offender System, State Personnel Board case number 2007G095.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing based on the Board's findings that Complainant failed to show circumstances giving rise to an inference of unlawful discrimination and therefore did not establish a *prima facie* case of discrimination.

- C. Donald Wayne v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2008G055.

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

- D. De'Edra Dangerfield v. Department of Labor and Employment, Department of Quarterly Census Employment Wages, State Personnel Board case number 2007S002.

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

- E. Bobby Espinoza v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2008G009 (C).

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

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

Mr. Kaye announced to the Board that there was going to be a DHR Performance Management Forum to talk about what works and what does not work in the current performance management system. In addition, a DPA task force will be looking at the evaluation process as to what are the benefits of such a process, given all the efforts put into the process. For purposes of Partnership Agreements, management positions are those employees who are close to the decision-making process and therefore, are excluded from the election process. Mr. Corrada remarked that the definition of supervisor appears to be "hugely broad."

Barbara Sohnen, DHR Rules Interpreter, announced that DPA had issued its Notice of Rulemaking for June 2, 2008, regarding employee incentives, FML, the teacher class, among other topics, with rules effective August 1, 2008. In addition, Ms. Sohnen reported that Emergency Rules adopted by DPA on May 8, 2008, would be effective July 1, 2008. Mr. Kaye added that DPA was incorporating a more robust use of incentives into its administrative procedures.

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Memorandum of Understanding between Colorado State Personnel Board and Division of Labor, Department of Labor & Employment

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that she and the Administrative Law Judges had attended an Evidence Course on May 16, 2008, given by Professor Sheila Hyatt; implementation of e-filing is in progress and the current database, with 8-10 years of Board cases, is going to be updated with a new database created by IT, so that eventually Board files will be paperless; and during the week of the Democratic National Convention, there will be no hearings set.

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

Scott Horak addressed the Board. He asked the Director if his case had been concluded; the Director stated that it had not been dismissed and asked him not to discuss the particulars of his case. Mr. Horak alleged that nobody seems to have a definition of "merit," and there is no statutory definition for "chain of command." Without a definition of merit, Mr. Horak stated there can be no consistency and rules cannot be enforced without a definition of merit. He then asked the Board how many of 60,000 state employees and supervisors are insane or bi-polar, and are doing evaluations. He said the appeals process is designed as a trust, to protect employees. At that point, Mr. Djokic asked him not to discuss his current case with the Board, and he concluded his comments.

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

The Director provided an updated chart to the Board on the 2008 Legislative Session – tracking for bills in which the Board is interested.

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the April 15, 2008 Executive Session
- C. Other Business

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APPROVED THIS 17th DAY OF JUNE, 2008.

Rich Djokic, Board Chair

Roberto Corrada, Member

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member