

State of Colorado



Bill Ritter, Jr.
Governor

Rich Djokic
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Board Director

State Personnel Board
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Meeting Minutes June 17, 2008

The State Personnel Board met in public session on Tuesday, June 17, 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 9:08 a.m. Board members Roberto Corrada, Rich Djokic, Dana Shea-Reid, and John Zakhem were present in person. Board member Robert Thompson arrived at 9:17 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.

PRESENTATION OF PLAQUE TO JOHN ZAKHEM

The meeting began with the presentation of a plaque by Board Chairperson Rich Djokic to John Zakhem, whose term ends on June 30, 2008, in appreciation for his eight years of service to the State Personnel Board.

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

There was no report from Mr. Gonzales this month.

II. REQUESTS FOR RESIDENCY WAIVERS

Director Rozansky reported on three residency waiver requests this month. The first is from the Department of Agriculture for the position of State Veterinarian. This request is being held in abeyance until the Department can demonstrate in-state recruitment efforts.

The Department of Natural Resources (DNR) requested a residency waiver for Division Wildlife Manager (DWM) I, II and III. The Director granted this renewal of a residency waiver request in part and denied it in part. With respect to DWM

I, the request was denied because DNR did not demonstrate that there is not a viable pool of in-state applicants for the DWM I. With respect to the DWM II and III positions, DNR demonstrated that the positions could not be readily filled from among residents of the State of Colorado. Therefore, a residency waiver was granted for the DWM II and III positions through May 31, 2009. Human Resources Director for DNR, Kim Burgess, appeared before the Board in order to answer questions, but there were no questions raised.

The Department of Human Services (DHS) requested a renewal of its residency waiver for Nurse I, II, III and Mid-level Providers. DHS has demonstrated that the positions cannot be readily filled from among residents of the State of Colorado. Therefore, a residency waiver for the Nurse I through Mid-Level Provider classes was granted through May 31, 2009.

III. PENDING MATTERS

A. Retention Area Requests.

1. Department of Higher Education and Colorado Historical Society, State Personnel Board case number 2008D002.

Mr. Zakhem moved to table the Department of Higher Education's request to limit the retention area of the Colorado Historical Society to the Colorado Historical Society until the July 15, 2008 meeting when representatives of the Department of Higher Education and the Colorado Historical Society should be in attendance to respond to questions from the Board, including whether proper notice has been given to all affected employees, pursuant to Board Rule 7-17, 4 CCR 801. Mr. Corrada 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

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

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

- A. Nadine Roberts-Cornish v. Department of Public Health and Environment, Disease Control & Environmental Epidemiology, State Personnel Board case number 2008G060.

Mr. Corrada moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the issues of unlawful discrimination on the basis of race or color and unlawful retaliation. 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. Joshua Davis v. Department of Corrections, Division of Adult Parole and Community Corrections, State Personnel Board case number 2008G061.

Following a discussion of the concept of "liberty interest," Mr. Corrada moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the issue of reviewing the factual basis for Complainant's termination, for the purpose of determining whether Complainant's liberty interest in his employment has been harmed and whether his name should be cleared of that termination. Mr. Thompson 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 voted in opposition to the motion.

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

- A. Barbara Pridemore v. Department of Public Health and Environment, State Personnel Board case number 2007G073 (May 20, 2008).

Respondent filed a Designation of Record in this case on June 9, 2008/

- B. Douglass Harris v. Department of Human Services, State Personnel Board case number 2008B050 (May 23, 2008).

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

VII. REVIEW OF THE MINUTES FROM THE MAY 20, 2008 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Zakhem moved to approve the minutes of the May 20, 2008 meeting as submitted. Mr. Corrada 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 MAY 20, 2008 PUBLIC MEETING:

- A. Petition for Declaratory Order of Laura Taylor v. Department of Public Health and Environment, State Personnel Board case number 2008D001.

The Board remanded this case to an Administrative Law Judge to set the matter for hearing, with an order that the parties in interest, including Petitioner, the Department of Public Health and Environment, the Colorado Public Employees' Retirement Association and the Attorney General, be noticed that the matter is set for hearing.

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

The Board granted the Motion to Dismiss, contained in Respondent's Motion to Dismiss and in the Alternative, Answer Brief; made it an Order of the Board; and dismissed the matter with prejudice.

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

Barbara Sohnen, DHR Rules Interpreter, reported to the Board that a rulemaking hearing was held on June 2, 2008, by DPA. Ms. Sohnen stated that after considering the record, including written comments received before the hearing and oral testimony given at the hearing, a few changes were made to the proposed rules, and the rules were adopted by Rich Gonzales, the State Personnel Director, on June 13, 2008. The issues addressed by the rules, as articulated by Ms. Sohnen, include FMLA, senior executive service, incentives, discretionary pay differentials, transfers and in-range salary movements, performance management, and time off. In addition, she stated that there were also some housekeeping changes made, such as correcting punctuation and typographical errors. In response to Mr. Zakhem's question regarding whether there was a change to SES criteria, Ms. Sohnen responded in the negative.

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 staff had revised the Board's Chapter in the Employment Law Handbook published by Colorado Continuing Legal Education. This is a chapter that Robert Thompson originally authored.

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

Stacy Worthington, who recently retired after working 18 years in the Office of the Attorney General and 2 years as Director of the State Personnel Board, expressed her appreciation to the Board for its efforts in balancing service to the state's taxpayers and the interests of state employees. Mr. Thompson thanked Ms. Worthington for her years of public service. Ms. Worthington introduced Vince Morscher, Assistant Attorney General, as the new First Assistant Attorney General for the Employment Section. Mr. Morscher stated that he is looking forward to working with Director Rozansky in his capacity as First Assistant Attorney General. Mr. Zakhem remarked that when Ms. Worthington returned to the Attorney General's Office following her tenure as Board Director, there was a noticeable improvement in the quality and tone of briefs to the Board and expressed the hope that this would continue. Mr. Morscher assured him that it would.

XI. PROPOSED LEGISLATION AND/OR RULEMAKING

The Director provided an updated and final chart to the Board on the 2008 Legislative Session – covering the final status of bills in which the Board is interested.

XII. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the May 20, 2008 Executive Session
- C. Other Business

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APPROVED THIS 15th DAY OF JULY, 2008.

Rich Djokic, Board Chair

Roberto Corrada, Member

Dana Shea-Reid, Member

Robert Thompson, Member

John Zakhem, Member