

**ORDER OF THE STATE PERSONNEL BOARD**

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CATHY L.Z. SMITH and THOMAS AURAND

Complainants,

v.

DEPARTMENT OF HIGHER EDUCATION, STATE BOARD OF AGRICULTURE,  
COLORADO STATE UNIVERSITY,

Respondent.

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The State Personnel Board (the "Board") met in public session on July 18, 2000. During this public session, the Board considered the record on appeal and cross-appeal, including but not limited to.

1. The Initial Decision of the Administrative Law Judge;
2. Complainant's Opening Brief filed June 14, 2000;
3. Respondent's Opening Brief filed June 14, 2000;
4. Complainant's Answer Brief filed July 3, 2000;
5. Respondent's Answer Brief filed on June 30, 2000;
6. Respondent's Reply Brief filed July 7, 2000; and
7. Complainant's Reply Brief filed July 10, 2000.

Additionally, a submission of pages related to Complainant's Reply brief was filed. On unanimous vote, the Board voted not to review the additional pages and strike them from the record.

The following order is entered:

**I. The Initial Decision and Findings of Fact**

The Board adopts the Findings of Fact contained within the Initial Decision of the Administrative Law Judge.

This order represents the affirmative vote of the following Board members:  
Ms. Hoffman, Ms. Daly, Ms. Lottner, and Ms. Snowden.

## **II. The Initial Decision and Conclusions of Law**

The Board adopts Conclusion of Law #1 of the Initial Decision of the Administrative Law Judge. The Board concludes that the policies and actions of Respondent were arbitrary and capricious and contrary to rule or law based on the following:

- Respondent violated Director's Procedure P-3-3-1, 4 CCR (1997) which provides that permanent full-time employees shall be compensated monthly at the appropriate monthly rate of pay when they work;
- Respondent violated CRS 24-50-104 which allows for employees to receive anniversary-based merit increases;
- Respondent violated CRS 24-50-101 such that the heads of principal departments and presidents of colleges and universities are responsible for their respective departments, colleges, or universities, and that the operation and management shall be in accordance with the procedures of the State Personnel Director; and
- No application of the Board's ruling in *Follett v. Colorado State University*, Case Number 98B138 was applied by Respondent when it modified its pay policy.

This order represents the affirmative vote of the following Board members:  
Ms. Hoffman, Ms. Daly, Ms. Lottner, and Ms. Snowden.

## **III. Attorney Fees**

The Board adopts the Administrative Law Judge's Conclusion of Law #2 and denies any award of attorney fees or costs in this matter. The parties failed to demonstrate the need for such an award under CRS 24-50-125.5. or under Board rule. Additionally, the Board takes no position on the unbundling of legal fees and costs.

This order represents the affirmative vote of the following Board members:  
Ms. Hoffman, Ms. Daly, Ms. Lottner, and Ms. Snowden.

## **IV. Interest**

In the Initial Decision of the Administrative Law Judge, the subject of an award of interest is raised. Both parties briefed the issue. The Board determines that it does have jurisdiction to award interest in its awards of back pay, costs, and benefits. As a result, in this matter the Board awards interest on the unpaid sum to the Complainants.

This order represents the affirmative vote of the following Board members:  
Ms. Hoffman, Ms. Daly, Ms. Lottner, and Ms. Snowden.

Dated this \_\_\_\_\_ day of  
July, 2000

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Joy Hoffman  
Board Chair  
State Personnel Board  
1120 Lincoln Street, Suite 1420  
Denver, CO 80203

### **NOTICE OF APPEAL**

Each party has the following rights:

1. To abide by this decision of the State Personnel Board; or
2. To appeal this decision to the Colorado Court of Appeals within 45 days pursuant to Section 24-4106(11), C.R.S. (1999), as provided in Section 24-50-125.4(3), C.R.S. (1999).

In the event the decision is appealed, the Board requests that a copy of the Notice of Appeal filed with the Court of Appeals also be filed with the State Personnel Board at: 1120 Lincoln Street, Suite 1420, Denver, CO 80203. Such will aide in the timely preparation of the record.

**CERTIFICATE OF MAILING**

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2000, I placed true copies of the foregoing ORDER OF THE STATE PERSONNEL BOARD, in the United States mail, postage prepaid, addressed as follows:

Allen R. Schwartz, Esq.  
315 West Oak, Suite 501  
P.O. Box 544  
Fort Collins, CO 80521

And in the interagency mail, addressed as follows:

Stacy L. Worthington  
Assistant Attorney General  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203

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