

State of Colorado



John W. Hickenlooper
Governor

Sally Yerger
Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
1525 Sherman Street, 4th Floor
Denver, Colorado 80203
Phone (303) 866-3300
Fax (303) 866-5038

Meeting Minutes April 21, 2015

The State Personnel Board met in public session on Tuesday, April 21, 2015, at the Colorado State Personnel Board, 1525 Sherman Street, First Floor Conference Room 103, Denver, Colorado 80203.

The meeting was called to order at 9:06 a.m. Board Members Neil Peck, Teresa Salerno, Vonda Hall, Michelle Palmquist, and Sally Yerger were present in person.

Director Shea-Reid formally introduced Cindy Klyn, the new Legal Assistant for the Board.

Dana Shea-Reid, Board Director; Assistant Attorney General Andrea Faley, Board Counsel; and Cindy Klyn, Legal Assistant, were present in person.

I. REPORT OF DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA] AND REPORT OF THE DIVISION OF HUMAN RESOURCES [DHR], DPA

Kim Burgess, State Chief Human Resources Officer, reported to the Board on behalf of DPA/DHR as follows:

- This year Open Enrollment is a fully active enrollment and is the first time the enrollment process has been 100% active in 5 years. Since the enrollment commenced, 35% of employees have already participated in the on-line enrollment.
- The performance management process to develop annual plans and complete reviews has recently concluded. DHR anticipates that a number of employees will request a Director's review, which is typical after a review cycle. Consulting services has attempted to reduce that number by recommending that supervisors review job descriptions and job duties when developing their performance plans for employees.
- With regard to legislative updates which impact the workforce, there are several issues under consideration that DPA is tracking that include adjustment to the minimum wage; raising the threshold for overtime

eligibility; and creating an insurance program for paid Family Medical Leave (FML) for all Colorado employees and administered by CDLE.

- - Ms. Yerger inquired about funding for the FML insurance program and Ms. Burgess responded that contributions would be made through payroll deduction by employees.
- The Long Bill will address pay adjustments for State employees that will go into effect July 1, 2015.
- DHR conducted a rulemaking to repeal Risk Management rules that duplicate statutes verbatim, and which, otherwise, would not impact the management of the Risk program.

II. PENDING MATTERS AT THE COURT OF APPEALS

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

No Initial Decisions or other Final Orders of the Administrative Law Judges on Appeal to the Board this month.

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

- A. Tanya Sewell v. Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center, State Personnel Board case number 2015G044.

Board members expressed concern about ongoing “trends” with agencies failing to follow the interactive process and whether the agencies provide adequate training on interactive processes. Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, Mr. Peck and Ms. Yerger.

- B. Paul Barker v. Department of Transportation, State Personnel Board case number 2015G050.

Ms. Palmquist moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Palmquist, Ms. Salerno, Mr. Peck and Ms. Yerger. Ms. Hall voted in opposition to the motion.

- C. Emmett Malone, Doris Frey(Jung), and Rosendo Majano v. Department of Public Health & Environment, Air Pollution Control Division, State Personnel Board case number 2015G062.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Yerger seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck and Ms. Yerger. Ms. Salerno voted in opposition to the motion.

- D. Constance M. Dalton v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute, State Personnel Board case number 2015G068.

Mr. Peck noted that the Board is regularly seeing cases where agencies are not following internal procedures and invited DPA to have a conversation with the Board on the matter. Ms. Hall moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, Mr. Peck and Ms. Yerger.

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

David S. Turner v. Department of Revenue, Division of Motor Vehicles, State Personnel Board case number 2014B097 (March 13, 2015).

Pursuant to section 24-4-105(14)(a)(II) and (15)(b) C.R.S., Mr. Peck moved that the Board issue an order modifying the Initial Decision of the Administrative Law Judge of March 13, 2015, so as to include with the Initial Decision a Notice of Appeal Rights giving the parties 20 days to designate the record and 30 days to appeal the Initial Decision to the Board, from the date of the certificate of service on the order modifying the Initial Decision of the Administrative Law Judge. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck and Ms. Yerger.

VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 17, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Yerger moved to approve the Minutes from the March, 2015. Ms. Palmquist seconded the motion. Mr. Peck abstained. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS March 17, 2015 PUBLIC MEETING:

- A. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003, Court of Appeals Number 2014CA1996.

The Board voted to remand the matter to the Administrative Law Judge to determine the amount of damages to Complainant and to address the issue of reinstatement that was deferred pending completion of the interactive process, which is consistent with the order of the Court of Appeals.

- B. Jack Chen v. Department of Human Services, Office of Economic Security, Food Distribution Program, State Personnel Board case number 2014B034.

The Board voted 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 an order of the Board.

- C. Anthony Beauford v. Department of Human Services, Colorado State Veteran's Home at Fitzsimons, State Personnel Board case number 2014G085.

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

- D. Todd C. Crow v. Department of Corrections, State Personnel Board case number 2015G029.

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

- E. Joel F. Wade v. Department of Public Health & Environment, Center for Health & Environmental Data, State Personnel Board case number 2015G056.

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

- F. Jennie Sinclair v. Department of Natural Resources, Colorado Parks & Wildlife, State Personnel Board case number 2015S009.

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

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

Board Counsel Faley briefed the Board on cases before the Court of Appeals. She indicated that the COA struck the opening brief of Robinson and gave him an opportunity to file again; he did so on April 10, 2015. The Board may choose to weigh in on the matter after reviewing the Opening Brief of Appellant.

B. OTHER BOARD BUSINESS

Director Shea-Reid provided an update on staffing and expressed her pleasure that Cindy Klyn has been hired as the new Legal Assistant and will be a valuable addition to the Board because of her prior experience with the State Personnel Board as well as other state agencies.

Director Shea-Reid reported that the selection process for the new ALJ is continuing, with the applicant review and assessment having just been completed. She said interviews will be conducted soon, but the hoped-for start date of mid-May will likely have to be pushed out to later in the month.

The Director introduced the topic of format changes to the Preliminary Recommendation, which had been tabled at the March Board meeting in order that all Board members would be present to participate in the discussion. The Board reviewed the modified format and discussed whether or not the lack of inclusion of the information sheet in the PR would eliminated necessary information the Board might need in its decisions. Board Chair Yerger invited comments from the public and Michelle Brissette-Miller from the Office of the Attorney General stated her concerns regarding the removal of the information sheet from PRs and due process issues she felt it created. The Board then went into Executive Session for purposes of legal advice.

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

There were no comments.

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

At 10:21 a.m., Ms. Yerger made a motion to enter into Executive Session for the purpose of receiving legal advice pursuant to 24-6-402(3)(a)(II), C.R.S., regarding the Preliminary Recommendation process as well as to discuss personnel matters regarding the annual review of the Board Director. The motion was seconded by Ms. Palmquist. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck, Ms. Salerno and Ms. Yerger.

The Director and the Legal Assistant were excused from the room during the discussion of personnel matters and rejoined the Board at the conclusion of personnel matters.

Executive session ended at 11:11 a.m.

XI. BOARD DELIBERATION

Following executive session and having received advice from Board Counsel, the Board re-entered public session and continued its discussion of content the Preliminary Recommendation.

Ms. Yerger noted options that could be pursued:

1. Use the Preliminary Recommendation (PR) format with the information sheets attached;
2. Use the "old" format including the information sheets in the PR;
3. Use the modified format of the PR as recently presented without the information sheets;
4. Revise the new PR format to add additional information from the information sheet.

The Board requested additional input from the Administrative Law Judges at the next Board meeting if possible. Director Shea-Reid will follow up and see what is feasible for the ALJs next month. She will also obtain examples of PRs on old appeals to provide the Board with a comparison of the various information sheets and their content, and how that information was incorporated by the ALJ in PRs. The Board agreed that, in the meantime, the format used for PRs before the Board this month (April) should continue to be used for next month's PRs.

The Board meeting ended by consensus at 11:34 A.M.

DATED THIS 19th DAY OF MAY, 2015.

Sally Yerger, Board Chair

Vonda Hall, Member

Michelle Palmquist, Member

Teresa Salerno, Member

Neil Peck, Member
