

State of Colorado



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Meeting Minutes September 16, 2014

The State Personnel Board met in public session on Tuesday, September 16, 2014, at the Colorado State Personnel Board, 1525 Sherman Street, First Floor Conference Room 104, Denver, Colorado 80203.

The meeting was called to order at 9:00 a.m. Board Members Vonda Hall, Michelle Palmquist, Neil Peck, and Sally Yerger were present in person. Board Member Teresa Salerno was absent.

Mr. Peck disclosed that he was recusing himself from participation in Kristina M. Grubb v. Department of Corrections, La Vista Correctional Facility, State Personnel Board case number 2014B069.

Dana Shea-Reid, Board Director; Assistant Attorney General Andrea Faley, Board Counsel; and Jane Sprague, 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 and DHR as follows:

- A pilot training program in mandatory compliance initiated by DHR is starting with the Department of Public Safety this week and will include training in workplace violence, sexual harassment, and discrimination.

Mr. Peck inquired how Public Safety was selected for the pilot training program. Ms. Burgess stated that Public Safety has certain federal requirements to meet and requested to be a part of the pilot program.

- DHR is revising some of its Technical Guides on subjects such as furloughs, discretionary pay, the Fair Labor Standards Act, and other topics. The revisions should be out in the next 1-2 months.
- DHR is continuing its work with agencies on the Director's review process.

- The HRIS project may occur sooner than later and there should be further information next month.
- Ms. Burgess and Director Shea-Reid worked together on preliminary revisions to the proposed Board Rules which will be considered in the Board Rulemaking on October 21, 2014.

II. PENDING MATTERS – CASES ON REMAND FROM THE COURT OF APPEALS

- A. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390.
- B. Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014; Mandate Issued July 25, 2014.

The Board expressed a desire to obtain legal advice from Board Counsel regarding their options in both of these cases, and thus, tabled the discussion of the cases until after Executive Session.

III. 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.

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

- A. Kristina M. Grubb v. Department of Corrections, La Vista Correctional Facility, State Personnel Board case number 2014B069.

Mr. Peck recused himself from participation in this matter and left the meeting room.

Ms. Hall moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following members: Mr. Hall, Ms. Palmquist, and Ms. Yerger.

Following the vote, Mr. Peck returned to the meeting room.

- B. Carl Jesse Elston v. Department of Natural Resources, Division of Water Resources, Office of State Engineer, State Personnel Board case number 2014G058.

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

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

- A. Jennifer Reno v. Department of Human Services, Division of Regional Center Operations, Pueblo Regional Center, State Personnel Board case number 2013B142(C) (August 28, 2014).

The Board took no action in this matter.

VI. REVIEW OF THE MINUTES FROM THE AUGUST 19, 2014 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Mr. Peck moved to approve the Minutes from the August 19, 2014 meeting as submitted. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Palmquist, Mr. Peck, and Ms. Yerger. Ms. Hall abstained because she was not present at the August 19, 2014 meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 19, 2014 PUBLIC MEETING:

- A. Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014; Mandate Issued July 25, 2014.

The Board voted to remand the matter to the Administrative Law Judge for the limited purpose of determining the sufficiency of the record. The Administrative Law Judge may, in her discretion, permit a responsive brief by the Department on this limited issue before making a determination. The Administrative Law Judge will then submit her determination to the Board as to the sufficiency of the Administrative Record, and the Board will review and rule on such determination at its next regularly scheduled meeting. In addition, the briefing schedule previously established

concerning the appeal to the Board is stayed pending the Board's review of the determination of the Administrative Law Judge on the sufficiency of the record.

- B. Terrence M. Sullivan v. Department of Transportation, State Personnel Board case number 2014B003 (March 17, 2014).

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision of the Administrative Law Judge and to make it an order of the Board.

- C. Randy Kennedy v. Department of Public Safety, State Personnel Board case number 2013G096.

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

- D. Pauline Steckel v. Department of Human Services, Division of Regional Center Operations, Wheat Ridge Regional Center, State Personnel Board case number 2014079.

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

- E. Kristi L. Gray v. Department of Transportation, State Personnel Board case number 2014G087.

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

- F. Kate E. Kelly v. Department of Transportation, State Personnel Board case number 2014G089.

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

VIII. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

Board Counsel Faley updated the Board on the following cases at the Court of Appeals:

- Ryan – opening brief was due 8/25/14, but no brief was filed;
- Honest – opening brief is due 9/30/14;
- Kirkmeyer – oral argument has been rescheduled for 9/24/14.

B. OTHER BOARD BUSINESS

Director Shea-Reid reported that she attended a meeting with Colorado State Patrol and DPA representatives and learned that the 1525 Sherman Street building was going to obtain security. CSP is hoping things will be up and running by November 1, 2014. CSP will staff the security screening area in the lobby of 1525 and will utilize the Magnatron originally purchased and used by the Board in prior years as well as and an x-ray machine.

Mr. Peck inquired if a video camera would be a part of the security screening and Director Shea-Reid responded there was no mention of the use of video cameras in the meeting she attended.

Ms. Yerger expressed a desire to have some means of identification, so that Board members would not be subjected to a search of their personal belongings each time they attend Board meetings. The Director said she would look into the possibility of obtaining identification cards for the Board members.

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

There were no comments.

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

Director Shea-Reid reported that the rulemaking filing for the Secretary of State and the Department of Regulatory Agencies was completed on September 15, 2014, for the Rulemaking Hearing scheduled for October 21, 2014. She thanked Ms. Burgess and Michelle Brissette Miller, First Assistant AG in the Employment and Personnel Unit, and agency HR Directors for their input and feedback on the proposed changes to the Board Rules.

The Notice of Rulemaking and redlined copy of the proposed rules will be sent to the stakeholders today, and there will be a link on the Board's website for additional information on the rulemaking. Stakeholders may submit comments on the proposed changes to the rules until October 17, 2014.

X. EXECUTIVE SESSION

- Attorney advice regarding Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014.
- Attorney advice regarding Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390.

At 9:25 a.m., Ms. Yerger made a motion to enter into Executive Session for the purpose of discussing disputes that are the subject of pending or imminent court action, pursuant to § 24-6-402(3)(a)(II), including discussion with counsel regarding the pending appeal and the legal basis for the Board's defense regarding the following matters: Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014, and Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390. In addition the Board is entering Executive Session for the purpose of receiving legal advice on specific legal questions pursuant to § 24-6-402(3)(a)(II), C.R.S., regarding Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131. The motion was seconded by Ms. Hall. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck, and Ms. Yerger. Executive Session ended by consensus at 10:11 a.m.

XI. BOARD DELIBERATION

- A. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Court of Appeals Number 2014CA390.

In the return to open session, Mr. Peck made a motion to authorize Board Counsel to prepare and file a brief at the Court of Appeals on behalf of the Board and to obtain an extension of time, if necessary, within which to file the brief. The brief of the Board is to address two issues: (1) the Board's jurisdiction relative to the allegations that Colorado State Patrol acted in an arbitrary and capricious manner; and (2) the award of front pay to Complainant. The motion was seconded by Ms. Hall. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Mr. Peck, and Ms. Yerger.

- B. Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012B131, Court of

Appeals Number 2013CA1147, Order Reversed and Case Remanded with Directions, May 22, 2014; Mandate Issued July 25, 2014.

Ms. Yerger made a motion to remand the matter to the Administrative Law Judge for clarification as to whether submittals by Complainant, including Exhibits A-W in Complainant's August 29, 2014 Reply Brief to University's Answer Brief and Complainant's Response to the University's Response to the September 3, 2014 Order, filed by Complainant on September 8, 2014, were reviewed by the Administrative Law Judge in her consideration of the sufficiency of the administrative record and further authorized the Administrative Law Judge to stay the Amended Briefing Schedule or to amend the Amended Briefing Schedule, as needed. 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, and Ms. Yerger.

The Board meeting ended by consensus at 10:30 a.m.

DATED THIS 21st DAY OF OCTOBER, 2014.

Sally Yerger, Board Chair

Neil Peck, Vice Chair

Vonda Hall, Member

Michelle Palmquist, Member