

# State of Colorado

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**John W. Hickenlooper**  
*Governor*

**Neil Peck**  
*Board Chair*

**Dana Shea-Reid**  
*Board Director*

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

## Meeting Minutes October 20, 2015

The State Personnel Board met in public session on Tuesday, October 20, 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 9:00 a.m. Board Members Vonda Hall, Nora Kelly, Michelle Palmquist, Neil Peck and Teresa Salerno were present in person.

Dana Shea-Reid, Board Director and Leanne DeVos, Board Counsel 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 on behalf of DPA/DHR.

- DHS has reviewed what was referred to as strong proposals for the new HRIS and will negotiate a proposal within the next 3-4 weeks.
- October 20 is the final meeting for the rate setting for employee benefits with efforts being made to maintain premiums for employees despite an increase in costs to the state.
- Directors Procedures in Chapters 5 (leave) and 11 (benefits) are being reviewed in accordance with the standard review schedule. Stakeholders including the HR community, employees and COWins will be invited to participate in the review of the rules.
- The process for rule review has been changed from sending out a "redline" list of proposed changes to issuing "scoping requests" to stakeholders to get the issues and rules needing revision. Rulemaking will take place after January, 2016.

- The merit pay methodology resulting from Amendment “S” is being reviewed to determine if it is doing what it was intended to do with regards to rewarding employees for performance and moving them through the pay range. A report should be ready in the next month or so.

## **II. PENDING MATTERS AT THE COURT OF APPEALS**

Opening briefs have been filed for Chen and Sheridan with the Court of Appeals. The Board declined to file any briefs for either case.

## **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**

The Board voted to table review of Preliminary Recommendations until after Executive Session in order obtain legal advice from Counsel.  
(see XI. Board Deliberation)

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

Anthony Martinez v. Department of Corrections, Centennial Correctional Facility,  
State Personnel Board case number 2015B044 (September 9, 2015).

The Board took no action in this matter.

## **VI. REVIEW OF THE MINUTES FROM THE JULY 21, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Hall moved to approve the minutes as submitted. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Peck and Ms. Salerno. Ms. Kelly and Ms. Palmquist abstained as they were not in attendance at the July 21, 2015 Board meeting.

## **REVIEW OF THE MINUTES FROM THE SEPTEMBER 15, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Ms. Palmquist moved to approve the minutes as submitted. Ms. Kelly seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Ms. Palmquist, Mr. Peck and Ms. Salerno.

### **VII. ACKNOWLEDGMENTS**

#### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 15, 2015 PUBLIC MEETING:**

- A. Michael E. DeLong v. Department of Transportation, State Personnel Board case number 2014G0110.

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

- B. Suzanne Kelley v. Department of Public Health and Environment, State Personnel Board case number 20150005(C).

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the issues of disability discrimination, retaliation and amending to add age discrimination.

### **VIII. ADMINISTRATIVE MATTERS & COMMENTS**

#### **A. ADMINISTRATIVE MATTERS**

- Cases on appeal to the Board and to Appellate Court.

Board Counsel DeVos briefed the Board on cases before the Court of Appeals:

Jack Chen (2014B034) has filed his opening brief.

Shantell Honest (2014G0036) obtaining counsel and is filing petition filed for Writ of Certiorari.

#### **B. OTHER BOARD BUSINESS**

No other Board business.

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

There were no comments.

## **IX. PROPOSED LEGISLATION AND/OR RULEMAKING**

None.

## **X. EXECUTIVE SESSION**

At 9:15 a.m., Mr. Peck made a motion to enter into 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 cases before the Court of Appeals (Chen and Sheridan) and for general advice regarding the Board's authority in granting discretionary hearings.

The motion was seconded by Vonda Hall. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Ms. Palmquist, Mr. Peck and Ms. Salerno. Executive session ended by consensus at 10:07 a.m.

## **XI. BOARD DELIBERATION**

A. Julie Maestas v. Department of Human Services, Office of Early Childhood, Background Investigations Unit, State Personnel Board case number 2015G105.

Ms. Hall moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing; Ms. Kelly seconded the motion. The motion failed on votes in opposition from the following Board members: Ms. Palmquist, Mr. Peck and Ms. Salerno. Ms. Hall and Ms. Kelly voted to adopt the recommendation. The Preliminary Recommendation was rejected based upon findings that the business need for the transfer of the Background Investigation Unit from Pueblo to Denver was contemplated by the Respondent well before the date of the adverse action affecting the Complainant's work site and that the temporal proximity between Complainant's protected disclosures and the Respondent's announcement of the decision to transfer Complainant's work away from Pueblo is not sufficient to raise an inference of a causal connection between Complainant's disclosure and Respondent's adverse action. The Board found that the retaliation element of a Whistleblower claim was not sufficiently shown.

B. David Xu v. Department of Transportation, State Personnel Board case number 2015S033.

Ms. Salerno 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. Hall, Ms. Kelly and Ms. Palmquist, Mr. Peck and Ms. Salerno.

C. Zachary Cartaya v. Department of Human Services, Office of Performance Management & Strategic Outcomes, Division of Budget & Policy, State Personnel Board case number 2015G099.

Ms. Palmquist 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. Kelly and Ms. Palmquist, Mr. Peck and Ms. Salerno.

D. Richard Bassett v. Department of Revenue, Tax Auditing & Compliance, Field Audit Section, State Personnel Board case number 2015G0108.

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

E. Maureen O'Keefe v. Department of Corrections, State Personnel Board case number 2015G048.

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

The Board meeting ended by consensus at 11:00 A.M.

**DATED THIS 15<sup>th</sup> DAY OF DECEMBER, 2015.**

SIGNATURES

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Neil Peck, Board Chair

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Vonda Hall, Vice Chair

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Nora Kelly, Member

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Michelle Palmquist, Member

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Teresa Salerno, Member

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