

State of Colorado



John W. Hickenlooper
Governor

Neil Peck
Board Chair

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Board Director

State Personnel Board
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Meeting Minutes December 15, 2015

The State Personnel Board met in public session on Tuesday, December 15, 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 9:05 a.m. Board Members Vonda Hall, Nora Kelly, Michelle Palmquist, Neil Peck were present in person; Teresa Salerno participated by conference call.

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.

- In October Ms. Burgess discussed the annual report to the Legislature on merit pay. DHS is working on that report and it will be published a month later with what was learned from data in the recent survey. Ms. Burgess stated that it is difficult to arrive at any solid conclusions regarding correlations between merit pay and recruitment and retention but DHR will use results of the employee engagement survey as well as exit interviews to determine if correlations exist.
- The informal scoping for rulemaking for Chapters 5 and 11 (leave and benefits) has been completed and the process will move forward with no significant departures from existing rules.
- DHR is monitoring requests for Director's reviews to note trends and will use that information for conversations with agencies to improve their processes. The

majority of Director's review requests involve selection or final ratings in performance reviews.

II. PENDING MATTERS AT THE COURT OF APPEALS

There were no pending matters before the Board this month.

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. Barbara Fahmy v. Department of Department of Labor & Employment, Division of Worker's Compensation, State Personnel Board case number 2016G022.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing and refer the petition to the State Personnel Director to take any action deemed to be appropriate. 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.

B. Monyett Ellington v. Department of Human Services, Office of Early Childhood, State Personnel Board case number 2015G052.

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

C. Israel Espiricueta v. Department of Human Services, Office of Behavioral Health, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2016G008.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny 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.

D. Y'Evette Thomas v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Marvin W. Foote Youth Services Center, State Personnel Board case number 2016G023.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Kelly 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. John O'Toole v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2016G032.

Mr. Peck stated that the award of the attorney's fees and costs recommended by the ALJ should be paid by the Complainant's counsel, and that the Complainant should not bear the burden of that award. Ms. Kelly disagreed with the award of attorney's fees and with the legal interpretation of the term "frivolous". She stated she felt the award set a bad precedent for what she described as a "low level" of litigation. Mr. Peck noted that the litigation at hand was serious and moved to adopt the Preliminary Recommendation of the Administrative Law Judge to deny the petition for hearing and to award Respondent reasonable attorney fees and costs incurred in responding to a frivolous appeal. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, and Ms. Palmquist, Mr. Peck and Ms. Salerno. Ms. Kelly voted in opposition.

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

There were no Initial Decisions or Final Orders of the ALJs before the Board this month.

VI. REVIEW OF THE MINUTES FROM THE OCTOBER 20, 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.

REVIEW OF THE MINUTES FROM THE NOVEMBER 17, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

There were no minutes recorded for November 17, 2015 as the public Board meeting was cancelled.

VII. ACKNOWLEDGMENTS

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

No business was conducted on November 17, 2015 as the Board meeting was cancelled.

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. Of note were the oral arguments in the Williams appeal presented on November 17; a decision by the court should be forthcoming in the next two weeks.

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

XI. BOARD DELIBERATION

The Board meeting ended by consensus at 10:00 A.M.

DATED THIS 19th DAY OF JANUARY, 2016.

SIGNATURES

Neil Peck, Board Chair

Vonda Hall, Vice Chair

Nora Kelly, Member

Michelle Palmquist, Member

Teresa Salerno, Member
