

# 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  
February 16, 2016

The State Personnel Board met in public session on Tuesday, February 16, 2016, 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 were present in person; Teresa Salerno was absent.

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 to the Board on behalf of DPA/DHR as follows:

- A variety of different things are before the Legislature this session including proposals regarding employee pay and benefits. Although the state's economy is in recovery, the budget is in dire straits which is making it difficult for proposed salary and benefits changes.
- Premiums on medical insurance will remain stable.
- The HRIS project has been a long process but they hope to move to the next steps in the next few weeks.
- The General Professional (GP) series deconsolidation is continuing as well as a review of Information Technology (IT) classifications. The process should be invisible to employees since they will be placed in a class series with no effect on current pay.

## **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**

- A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013 (August 21, 2015).

Complainant appealed Respondent's Step II Grievance Decision holding that she would not be allowed to submit an application for the position of Tax Examiner II (TE II) in the Taxpayer Services Division after the application period had closed. Complainant argued that Respondent's decision was arbitrary or capricious or contrary to rule or law, and constituted unlawful gender discrimination in violation of the Colorado Anti-Discrimination Act (CADA). Complainant asked for an order providing all damages to make her whole, including but not limited to: placement in the TE II position; being given all training opportunities provided to the position; an award of back pay representing a 15% pay increase which Complainant would have earned in the position from the date of the incumbent's placement into the TE II position; front pay in the same amount from the date of judgment to placement in the position; an award of benefits from the date of hire into the position to the date of placement into the position; and an award of attorney fees and costs.

The Department of Revenue, Tax Audit and Compliance Division (Respondent) argued that the TE II selection process was performed fairly and without unlawful discrimination, that the position was properly posted as a reallocation without irregularities and that Complainant's failure to see that posting and apply for it during the application period was not the result of wrongdoing by Respondent. Respondent asked that the decision to deny Complainant's request to submit an application after the application period had closed be upheld; Complainant's claim of gender discrimination be denied; and Respondent's requests for attorney fees and costs to be granted.

The Administrative Law Judge affirmed Respondent's decision not to allow Complainant to submit an application for the position of Tax Examiner II after the application period had closed and affirmed the Respondent's Step II grievance decision. No attorney's fees were awarded and the case was dismissed with prejudice and referred to the State Personnel Director for further action if appropriate.

The Board tabled discussion on this item until after Executive Session in order to receive legal advice from Board Counsel. (See XI. Board Deliberation)

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

- A. Clarence Roberts v. University of Northern Colorado, Housing & Residential Education, State Personnel Board case number 2016G020.

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

- B. Vicki Jaramillo v. Department of Corrections, State Personnel Board case number 2016G029.

Ms. Hall 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 for any action deemed appropriate concerning Respondent's decision to transfer Complainant. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Ms. Palmquist, and Mr. Peck.

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

- A. Veronica A. Garrett v. Department of Corrections, Sterling Correctional Facility, State Personnel Board case number 2014B118. (January 11, 2016)

The Board took no formal action in this matter.

- B. James Jimerson v. Department of Corrections, Buena Vista Correctional Facility, State Personnel Board case number 2015B003. (January 11, 2016)

The Board took no formal action in this matter.

- C. Richard Reinhardt v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2014G088. (January 11, 2016)

The Board took no formal action in this matter.

- D. Justin Sturtevant v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2016B007. (January 29, 2016)

The Board took no formal action in this matter.

## VI. REVIEW OF THE MINUTES FROM THE JANUARY 19, 2015 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Palmquist moved to amend the minutes and approved them as amended. Ms. Kelly seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Ms. Palmquist and Mr. Peck.

## VII. ACKNOWLEDGMENTS

### DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 19, 2015 PUBLIC MEETING:

- A. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2012011G028. Court of Appeals No. 14VA0390.

The Board determined not to take any further action at this time.

B. Douglas Schreffler v. Department of Revenue, Division of Motor Vehicles, State Personnel Board case number 20015BB067.

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

C. Edgar Carlis v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2016B002. (December 16, 2015).

No formal action was taken by the Board.

D. David R. Martinez v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel case number 2015B092. (December 4, 2015).

No formal action was taken by the Board.

## **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.

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

Director Shea-Reid announced to the Board that F.J. "Rick" Dindinger has joined the SPB as an Administrative Law Judge.

### **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 10:20 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 the Initial Decision on appeal to the Board by Kathy Starling v. Department of Revenue, Tax Audit and Compliance, State Personnel Board case number 2014G013. Ms. Palmquist seconded the motion.

The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Ms. Palmquist and Mr. Peck.

Executive Session ended by consensus at 10:58 a.m.

## **XI. BOARD DELIBERATION**

A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013 (August 21, 2015).

Upon returning to open session, the Board deliberated on a proposal to adopt some of the facts of the Initial Decision but reverse the conclusion of law regarding what some Board members perceived as disparate treatment of the Complainant in the reallocation process. The Board deliberated on language of the motion.

After extended discussion, it was determined that more time would be required to properly draft a motion that was consistent with views of Board members and within the Board's authority.

Ms. Hall moved that the motion be tabled and that a special meeting be held to conclude the matter. 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 voted in opposition.

Director Shea-Reid will follow up with Board members to schedule a special meeting in the next several days.

The Board meeting ended by consensus at 11:24 A.M.

**DATED THIS 15<sup>th</sup> DAY OF MARCH, 2016.**

**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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