

# State of Colorado

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**John W. Hickenlooper**  
*Governor*

**Neil Peck**  
*Board Chair*

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

**State Personnel Board**  
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Meeting Minutes  
July 19, 2016

The State Personnel Board met in public session on Tuesday, July 19, 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 9:01 a.m. Board Members Vonda Hall, Nora Kelly, Michelle Palmquist, Neil Peck were present in person. Teresa Salerno participated via teleconference.

Dana Shea-Reid, Board Director and Leanne De Vos, Board Counsel, were present in person.

## **ELECTION OF BOARD OFFICERS**

The Board voted unanimously for Neil Peck as the Board Chair and voted unanimously for Vonda Hall as Vice Chair for fiscal year 2016-17. Mr. Peck and Ms. Hall will each be serving second terms as officers of the Board.

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

Kim Burgess the State CHRO noted goals for the new fiscal year including improvements to business operations; enhancing the dialogue on total compensation to emphasize the entire package; reviewing recruitment and retention issues, particularly with regards to prevailing wages; and focusing on being better business partners with State agencies.

Ms. Burgess noted that the total comp report will be out in about 3 weeks.

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

No pending matters.

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

None this month.

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

There were no Preliminary Recommendations before the Board this month.

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

A. Lynn A. Michel v. Department of Transportation, State Personnel Board case number 2015G091(c).

Complainant, a certified employee, seeks review of Respondent's decision not to select her for the position of Office Manager I, arguing that Complainant was subjected to disparate treatment on the basis of age in violation of the Colorado Anti-Discrimination Act (CADA), §24-34-401, *et seq.*, C.R.S. Complainant seeks all damages to make her whole, including but not limited to back pay from the date of the final agency decision to the date of hiring for the promotional position of Office Manager I on January 17, 2015; front pay, with yearly pay increases, in the amount of compensation Complainant would have earned had she been promoted to the age of 65; compensatory damages, including but not limited to back benefits, including lost PERA or service credits as a result of not being promoted, and all expense related to seeking other employment. Complainant also seeks an award of attorney fees and costs. Respondent seeks affirmance of its decision not to select Complainant for the Office Manager position, and denial of all relief sought by Complainant.

On June 24, 2016, the Administrative Law Judge reversed the Respondent's decision not to select Complainant for the Office Manager I position. To make Complainant whole for the age discrimination she has suffered, Respondent was ordered to provide Complainant a lump sum payment equal to the 12.5% raise she was denied, as well as any additional PERA contributions that would have resulted from this pay increase with statutory interest. The payment should be calculated from the date of hire of Ms. Berner as Office Manager I through the date of this initial decision, and shall be reduced by any salary increase Complainant received in her current or former position since January 2015. Attorney fees and costs are not awarded.

The Board briefly discussed the basis for awarding attorney's fees to the Complainant. Mr. Peck moved that the Board issue an order to the parties to brief the Board on whether or not the Complainant is entitled to an award of attorney's fees. Ms. Hall

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.

B. Mathew Mark Stiles v. Department of Corrections, Denver Reception & Diagnostic Center, State Personnel Board case number 2016B034.

Complainant, who was a certified state employee, appeals his termination of employment by the DOC. Complainant alleges that, although he did commit the act for which he was disciplined, the decision to terminate his employment was arbitrary, capricious or contrary to rule or law, and that his termination was not within the range of reasonable alternatives available to the appointing authority. Complainant seeks reinstatement, as well as back pay and benefits. Respondent requests that its decision be affirmed and that Complainant's appeal be dismissed with prejudice.

For the reasons set forth below, Respondent's decision to terminate Complainant's employment is modified.

On June 17, 2016, the Administrative Law Judge modified the Respondent's action, and ordered the termination be rescinded and replaced with a ten percent (10%) reduction in pay for six (6) months, from November 2, 2015 to May 2, 2016. Complainant is entitled to full back pay and benefits including but not limited to PERA contributions and service credit from November 2, 2015, to the date of reinstatement, offset by any substitute earnings or unemployment compensation received by Complainant.

The Board took no formal action in this matter.

## **VI. REVIEW OF THE MINUTES FROM THE JUNE 21, 2016 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

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

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD AT ITS JUNE 21, 2016 PUBLIC MEETING:**

A. James Jimerson v. Department of Corrections, State Personnel Board case number 2015B003.

The Board voted to adopt the Findings of Fact and Conclusions of Law in the Initial Decision of the Administrative Law Judge.

B. Andrea Mora v. Department of Human Service, Office of Administrative Solutions, Division of Employment Affairs, State Personnel Board case number 2016G047.

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

C. John Kovacs v. Department of Personnel and Administration, State Personnel Board case number 2016S015.

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**

- Board Counsel De Vos updated the Board on the status of appeals to the Court of Appeals and advised that the Court issued its mandate on Sheridan affirming the Board.

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

Director's Report:

Director Shea-Reid reported that she has been working with State CHRO Kim Burgess and Audra Payne with DHR to update the consolidated appeal form and the instruction sheet to make the form easier to complete, particularly for self represented individuals. The target date for launching the new form is August 1.

Director Shea-Reid advised the Board that on July 20 she will be presenting at a forum for HR professionals from state agencies to share information about the State Personnel Board and its function.

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

There were no comments.

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

## **X. EXECUTIVE SESSION**

## **XI. BOARD DELIBERATION**

The Board meeting ended by consensus at 9:25 a.m.

**DATED THIS 16th DAY OF AUGUST, 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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Teresa Salerno, Member

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