

# State of Colorado



**John W. Hickenlooper**  
*Governor*

**Neil Peck**  
*Board Chair*

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

**State Personnel Board**  
1525 Sherman Street 4<sup>th</sup> Floor  
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Meeting Minutes  
November 21, 2017

The State Personnel Board met in public session on Tuesday, November 21, 2017, at 1525 Sherman Street, First Floor Conference Room 104, Denver, Colorado 80203.

The meeting was called to order at 9:03 a.m. Board Members Vonda Hall, Nora Kelly, Maurie Knaizer, Michelle Palmquist and Neil Peck were present in person.

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

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

The next quarterly report is scheduled for December 19, 2017.

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

- A. Brittney Cisneros v. Department of Personnel and Administration, State Personnel Board case number 2017G080.

Mr. Peck moved to adopt the Administrative Law Judge's Order of Dismissal. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

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

- A. Edwin Herndon v. Department of Corrections, Office of Inspector General, State Personnel Board case number 2017G056(c).

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

- B. Jennifer Lopez v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Gilliam Youth Service Center, State Personnel Board case number 2018G002.

Ms. Palmquist moved to adopt the Preliminary Recommendation to 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, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

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

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

- A. Director Shea-Reid advised the Board that on November 9, 2017, the Administrative Law Judge issued an Initial Decision on *Macias v. University of Northern Colorado*, State Personnel Board case number 2016B21. Because of the issue date of the ID, the item could not be placed on the November 21 agenda, and in order to preserve the Board's 30 day review period, the review of the ID would have to be tabled until the December 19, 2017 Board meeting.

Ms. Palmquist moved to table review of *Macias v. University of Northern Colorado* until the next Board meeting on December 19. The motion was seconded by Ms. Hall and passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

#### **V. REVIEW OF THE MINUTES FROM THE OCTOBER 17, 2017 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Mr. Peck 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, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

#### **VI. ACKNOWLEDGMENTS**

##### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 19, 2017 PUBLIC MEETING:**

- A. Luke Ewing v. Department of Agriculture, State Personnel Board case number 2017S009.  
The Board voted to adopt the Preliminary Recommendation of the ALJ and grant Complainant's petition for hearing based Complainant's disability discrimination claim only.
- B. Jeffreyson R. Gieck v. Governor's Office of Information Technology, State Personnel Board

case number 2017G074.

The Board voted to adopt the Preliminary Recommendation of the ALJ and grant Complainant's petition for hearing.

- C. LaVerne J. Matthew v. Department of Local Affairs, State Personnel Board case number 2017G046.

The Board voted to adopt the Preliminary Recommendation of the ALJ and deny Complainant's petition for hearing.

- D. Laura Saurini v. Department of Corrections, Office of Clinical & Correctional Services, Division of Clinical Services, State Personnel Board case number 2016B075.

No formal action was taken.

- E. Vicki Armstrong v. Department of Human Services, Office of Children, Youth & Families, Division of Youth Corrections, Adams Youth Services Center, State Personnel Board case number 2017B016.

No formal action was taken.

## **VII. ADMINISTRATIVE MATTERS & COMMENTS**

### **A. ADMINISTRATIVE MATTERS**

- Board Counsel De Vos updated the Board on appeals to the Court of Appeals: Muller v. DOC and Rome v. University of Colorado at Colorado Springs are fully briefed. Briefing is in process for McCauley v. DOR. An appeal was filed with COA for Stiles v. Department of Corrections.

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

No business to report this month.

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

None.

## **VIII. RULEMAKING Chapter 8 Board Rules.**

The Board continued its discussion and deliberation on proposed changes to Board Rules in Chapter 8 as presented in the October 17, 2017 Rulemaking Hearing.

Director Shea-Reid provided the Board with an overview of each proposed rule change and additional amendments to the rules made as a result of stakeholder input which were then reviewed by the Board.

At the conclusion of deliberation, Board Chair Peck entertained motions to adopt the proposed changes, amend the proposed changes or to reject proposed changes for Board Rules in Chapter 8. The Chair noted the initial motion must include the findings by the Board that the record of the rulemaking demonstrates the need for the rules; the proper statutory authority exists for the rules; to the extent practicable the rules are clearly and simply stated so their meaning can be understood by any person required to comply with the rules; and that the rules do not conflict with other provision of the law.

Ms. Palmquist made the initial motion to adopt the following rules as proposed, citing the specific authority of the Board and provisions of the Statement of Basis and Purpose.

Motion #1 included the following proposed Board rules: 8-3A, 8-4, 8-8(B)(2), 8-8(C), 8-8(D), 8-12, 8-14, 8-15, 8-17, 8-19(A), 8-26, 8-26(B), 8-32(A), 8-34, 8-34(B), 8-35, 8-36, 8-36(B), 8-36(C), 8-38, 8-38(A), 8-38(A)(1), 8-38(A)(2), 8-38(A)(3), 8-38(A)(4), 8-38(B), 8-40, 8-41, 8-45, 8-45(A), 8-45(B), 8-45(C), 8-45(D), 8-45(F), 8-45(H), 8-46(B), 8-47, 8-48, 8-50, 8-51, 8-51(A), 8-51(B), 8-51(C), 8-51(D), 8-52(A), 8-52(B), 8-52(C), 8-52(D), 8-53(B)(1), 8-53(B)(2), 8-54(A), 8-54(B), 8-54(C), 8-54(D), 8-54(E), 8-54(F), 8-54(G), 8-54(H), 8-54(I), 8-55, 8-56, 8-56(A), 8-57, 8-58, 8-59, 8-60, 8-62, 8-64, 8-67, 8-68, 8-69.

The motion was seconded by Ms. Hall.

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

Ms. Kelly made the second motion to adopt the proposed rules and any amendments made related thereto. Motion #2 included the following proposed rules as amended:

8-2, 8-3, 8-8(A)(1), 8-8(A)(2)(c), 8-8(B)(1), 8-20, 8-25, 8-30, 8-31, 8-32, 8-34(A), 8-36(A), 8-36(D), 8-38(A)(5), 8-38(6), 8-38(7), 8-39, 8-41(A), 8-41(B), 8-45(E), 8-46(C), 8-51(E), 8-52(E), 8-53(B)(4), 8-56(B), 8-61.

The motion was seconded by Mr. Knaizer.

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

Ms. Hall made the third motion to reject the proposed change to Board Rule 8-18 providing that a party may “request a conference”, and to retain the original language of the rule that a party may “petition the Board for a hearing”, and further to adopt the proposed change to Board Rule 8-18 removing the last sentence of the rule regarding the provisions of the “Performance” chapter of the rules.

Ms. Kelly seconded the motion.

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

Mr. Peck made the fourth motion to adopt the proposed changes to Board Rule 8-45(G) as amended and to further amend the rule to remove the word “demonstrating” and add the word “establishing”.

Ms. Palmquist seconded the motion.

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

Ms. Hall made the fifth and final motion to reject the proposed changes to Board Rule 8-8(A)(2)(a) and to maintain the language of the original rule regarding the grievance process.

The motion was seconded by Ms. Kelly.

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

Board Chair Peck concluded the process of adoption by stating that the adopted rules will be filed with the Secretary of State with a request for an Attorney General’s opinion on the constitutionality and legality of the rules. He further stated that on or before the 20<sup>th</sup> day following the adoption of the rules, the rules will be filed with the Secretary of State for publication in the Code of Colorado Regulations. And, on or before the 20<sup>th</sup> day following the adoption of the rules, the rules will be filed with the Legislative Legal Services as required by law.

Mr. Peck announced that the State Personnel Board rulemaking was concluded, and the adopted rules will be effective January 14, 2018.

Mr. Knaizer acknowledged the attorneys who practice before the Board and attorneys in the Attorney General’s Office for their thoughtful input in the rulemaking process which helped make the process open and acceptable.

Director Shea-Reid extended special thanks to First Attorney General Michelle Brissette Miller for her attention to detail in her review of the proposed rule changes and very helpful input to the staff.

Mr. Peck thanked Director Shea-Reid and Board Counsel De Vos for their hard work during the entire course of the rulemaking process.

The Board meeting adjourned by consensus at 11:05 a.m.

**DATED THIS 19th DAY OF DECEMBER, 2017.**

**SIGNATURES**

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Neil Peck, Board Chair

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Michelle Palmquist, Vice Chair

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Vonda Hall, Member

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Nora Kelly, Member

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Maurie Knaizer, Member

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