

State of Colorado



John W. Hickenlooper
Governor

Neil Peck
Board Chair

Dana Shea-Reid
Board Director

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

Meeting Minutes
August 21, 2018

The State Personnel Board met in public session on Tuesday, August 21, 2018, at 1525 Sherman Street, First Floor Conference Room 104, Denver, Colorado 80203.

The meeting was called to order at 9:00 a.m. Board Members Nora Kelly, Maurie Knaizer, Michelle Palmquist and Neil Peck were present in person. Vonda Hall participated via conference call.

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

ELECTION OF BOARD OFFICERS FOR FY2018-2019

The Board conducted its annual election of officers. Nora Kelly nominated Neil Peck as Board Chair and the nomination was seconded by Maurie Knaizer. The motion carried by an affirmative vote of the full Board. Maurie Knaizer nominated Michelle Palmquist as the Board's Vice Chair and the nomination was seconded by Neil Peck. The motion carried by an affirmative vote of the full Board. The Chair and Vice Chair will serve as officers of the Board for FY 2018-2019.

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

Kim Burgess, the Chief HR Officer for the State provided an update on matters that impact State employees including recent legislation in the last session.

- The legislature approved increases to contributions to PERA which are pending until July 2019. There will also be changes to the age and service requirements for retirement that will impact employees. Ms. Burgess anticipated that there will be more bills regarding PERA before the legislators in the next session.
- The legislature approved a 3% across the board increase for all State employees in an effort to keep wages consistent with the prevailing market.
- DPA/DHR continues to work with employee health care with targeted goals of aligning with the prevailing market and improving the procurement process for health care.

- The HRIS implementation date has been modified to January 2019 and will involve rulemaking for a small number of Director's Procedures to align with the new system.
- Based on consultant's advice the Total Comp Annual Report will no longer be conducted on an annual basis because there are no significant changes in the market from one year to the next. Instead, the survey will focus on elements most likely to see greater fluctuations in the market such as health care insurance and pay.
- Ms. Burgess said several agencies requested additional funds to increase base pay for jobs that are lagging behind in the market to address the high rates of turnover, which in some areas has reached 30%. She noted that this is a statewide issue and the question of how to resolve it should have been asked a long time ago.
- In its annual performance plan, DPA is focusing on professional development and leadership development for employees.

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

A. Cassandra Singleton v. Department of Corrections, State Personnel Board case number 2017B078.

After deliberation, the Board presented two motions. Ms. Palmquist moved to adopt the findings of fact and conclusions of law of the Administrative Law Judge rescinding the termination of Complainant. Mr. Knaizer seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

In the second motion, Ms. Palmquist moved to remand the matter to the Administrative Law Judge to determine the award of back pay with statutory interest, all lost benefits and the award of attorney fees. Mr. Knaizer seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

B. Barbara Bloem v. Department of Health Care Policy & Finance, State Personnel Board case number 2016G011(c).

After deliberation, the Board presented two motions. Mr. Peck moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge affirming the disciplinary termination of Complainant. Ms. Palmquist seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

Finding that the Board Rule 6-10 meeting was conducted by Respondent and generally consistent with procedures defined by Board Rule 6-9 and Board Rule 6-10 and that the conduct of the Rule 6-10 meeting was not so flawed as to deprive Complainant of due process and a full and fair review of the factors enumerated in Board Rule 6-9, in a second motion, Mr. Peck moved to reverse the findings of fact and conclusions of law of the Administrative Law Judge in the award of back pay

to Complainant up to the date the evidentiary record was closed. Mr. Knaizer seconded the motion. The motion carried on the affirmative vote of the following Board members: Mr. Knaizer, Ms. Palmquist and Mr. Peck. Ms. Hall and Ms. Kelly voted in opposition.

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

- A. Kory Bond v. University of Colorado at Colorado Springs, Student Financial Services, State Personnel Board case number 2018G079.

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

- B. Janevere Idika v. Department of Human Services, State Personnel Board case number 2018G064.

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

- C. Tasha Dobbs v. Department of Corrections, State Personnel Board case number 2018S051.

Mr. Peck moved to adopt Preliminary Recommendation of the ALJ and deny the petition for hearing and refer the matter to the State Personnel Director for a Director's Review. Ms. Palmquist seconded the motion. The motion carried on the affirmative vote of the following Board members: Ms. Hall, Ms. Kelly, Mr. Knaizer, Ms. Palmquist and Mr. Peck.

- D. Jason Purdue v. Department of Regulatory Agencies, Division of Professions & Occupations, State Personnel Board case number 2018G047(c).

Ms. Palmquist moved to adopt Preliminary Recommendation of the ALJ and deny the petition for hearing. Mr. Peck seconded the motion. The motion carried 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

- A. Diana Ricci v. Department of Military and Veteran's Affairs, Division of Veteran Affairs, State Personnel Board case number 2018B019.

The Board took no formal action.

V. REVIEW OF THE MINUTES FROM THE JULY 17, 2018 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Palmquist moved to approve the minutes as amended. Mr. Knaizer seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Knaizer, Ms. Palmquist and Mr. Peck. Ms. Kelly abstained as she was not present at the meeting.

VI. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 17, 2018 PUBLIC MEETING:

- A. Rickard D. Helmick v. Department of Corrections, State Personnel Board case number 2017B053.

The Board voted to adopt the findings of fact and conclusions of law of the Administrative Law Judge but to reverse the order of the ALJ regarding attorney fees to also include the award of attorney fees for Complaint's claims of accommodation and harassment and to remand the matter to the Administrative Law Judge to determine the award of back pay and attorney fees.

- B. Yi Yu v. Department of Public Safety, State Personnel Board case number 2017B070

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge affirming Respondent's disciplinary action.

- C. Jeffreyson R. Gieck v. Governor's Office of Information and Technology, State Personnel Board case number 2017G074.

The Board voted to adopt the findings of fact and conclusions of law in the Administrative Law Judge's Order of Dismissal for Lack of Jurisdiction.

VII. ADMINISTRATIVE MATTERS & COMMENTS

- A. ADMINISTRATIVE MATTERS

Board Counsel De Vos updated the Board on the status of appeals: An oral argument was made before the court for McCauley v. DOR; the Board did not brief, but the parties did. Stiles v. DOC has requested oral argument which likely won't be set before November. Meiderhoff v. DOT has filed a motion for an extension of time; McNew v. DPS-certification of record is due.

Counsel De Vos noted that the Court of Appeals has shortened the time period for filing certified record from 90 days to 63 days and Board staff has made the necessary adjustments to the deadlines applied to cases on appeal.

Counsel De Vos formally announced that the August 21 meeting is her last before her planned retirement at the end of August. She introduced Assistant Attorney General Amy Lopez as the newly appointed Board Counsel.

On behalf of the Board, Mr. Peck thanked Ms. De Vos and expressed appreciation for “the wonderful work you have done for the State Personnel Board and the people of Colorado” and added, “we wish you the very best in your retirement.”

B. OTHER BOARD BUSINESS

Director’s Report:

- Director Shea-Reid introduced Anthony Fiedler, who is the new Board Assistant and was in attendance.
- The Board was asked to complete the annual Conflict of Interest Disclosure forms and return them at the end of the meeting.
- The Director Shea-Reid reviewed several charts with the Board that demonstrated the number of appeals filed in FY2017-18, the types of appeals filed, the per capita number of appeals filed by department and the percentage rate of settlements by appeal type.

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

VIII. PROPOSED LEGISLATION OR RULEMAKING

IX. EXECUTIVE SESSION

At 10:38 a.m., Mr. Peck made a motion to enter into Executive Session for the purposes of receiving legal advice on specific, legal questions, pursuant to § 24-6-402(3)(a)(II), C.R.S. regarding the implications of the U.S. Supreme Court’s Masterpiece Cake decision. Mr. Knaizer seconded the motion. The motion carried on the affirmative vote of the full Board.

The Board returned to open session at 11:14 a.m.

The Board meeting adjourned by consensus at 11:15 a.m.

DATED THIS 18th DAY OF SEPTEMBER, 2018.

SIGNATURES

Neil Peck, Board Chair

Michelle Palmquist, Vice Chair

Vonda Hall, Member

Nora Kelly, Member

Maurie Knaizer, Member