

State of Colorado



John W. Hickenlooper
Governor

Sally Yerger
Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
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Meeting Minutes June 16, 2015

The State Personnel Board met in public session on Tuesday, June 16, 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 9:00 a.m. Board Members Teresa Salerno, Vonda Hall, Michelle Palmquist, and Sally Yerger were present in person. Neil Peck was absent and excused.

Dana Shea-Reid, Board Director; Assistant Attorney General Andrea Faley, Board Counsel; and Cindy Klyn, Legal Assistant, 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:

- June Taylor who was recently appointed by the Governor as the new Executive Director of DPA, will attend the July Board meeting for a formal introduction.
- A request for proposal has been issued for a new HRIS and a vendor will be selected in September. It is anticipated the project will be on going for the next two years.
- Results from the Compensation Survey and Compensation study are final and reports will be published soon.
- Ms. Burgess reported that in the past fiscal year they have tracked 37 Director's reviews. Most of the appeals were regarding selection, minimum requirements or background checks conducted by law enforcement. These actions were ultimately upheld because the processes are good.

DHR consulting services is assisting agencies to enhance or refine their processes and provide better communications.

- Ms. Burgess introduced Kevin Furman, HR Director for CDOT, to provide information in response to Ms. Salerno's question from last month regarding how agencies handle the interactive process with potential ADA issues.

Mr. Furman said the policy directive for CDOT's interactive process was completed and reviewed by the Attorney General's Office and approved April 1, 2015. The interactive process will have five steps, that include the laws applied in each area and who is involved. Mr. Furman stated it will be easy to invoke the process which will identify needs; document issues; ensure employee needs are met and accommodations are validated. On-line training for the interactive process will be rolled out July 1, 2015 to include all CDOT supervisors and managers. He added that the training documents can be shared with other agencies.

- Ms. Palmquist asked if FML is part of the program, and Mr. Furman replied yes, depending on what part of the interactive process is invoked.

Ms. Burgess reported that the ADA/FML Coordinator position in DHR was vacated recently and they plan to fill it within the next 1-2 months and get back to providing state-wide tools, resources and guidance to agencies.

II. PENDING MATTERS AT THE COURT OF APPEALS

Arthur Robinson v. University of Colorado Denver, Information Technology Services, State Personnel Board case number 2012G131, Court of Appeals number 2013CA1147.

Regarding the Robinson appeal, Board Counsel Faley indicated that the Board may choose to file an answer, join the CU answer or take no action during the briefing process. The Board declined to take action in this matter

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. Rhonda Johnson v Department of Public Safety, State Personnel Board case number 2014G093.

Ms. Salerno moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno and Ms. Yerger.

- B. Micki Perez-Thompson v. Department of Transportation, State Personnel Board case number 2014G095(c).

The Board agreed to table this item until after executive session in order to receive legal advice on a related question.

- C. Kelley Kessler v. Department of Transportation. State Personnel Board case number 2014G104.

Ms. Hall moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing and refer this matter to the State Personnel Director for further action as appropriate. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

- D. Kathi Dean-Lee v. Department of Corrections, State Personnel Board case number 2015G031.

Ms. Palmquist moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing and refer this matter to the State Personnel Director for further action as appropriate. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

- E. Bernard Whitney v. Department of Human Services, Division of Employment Affairs, Office of Administrative Solutions, State Personnel Board case number 2015G061.

Ms. Yerger moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno and Ms. Yerger.

- F. Susan Ure v. Department of Human Services, Colorado Mental Health Institute at Pueblo State Personnel Board case number 2015G080.

Ms. Yerger 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. Palmquist, Ms. Salerno, and Ms. Yerger.

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

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

Ms. Palmquist moved to approve the Minutes from the May 19, 2015 meeting. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

REVIEW OF THE MINUTES FROM THE MAY 13, 2015 MEETING OF SELECTED MEMBERS OF THE STATE PERSONNEL BOARD

Ms. Yerger moved to approve the Minutes from the May 13, 2015 meeting. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

REVIEW OF THE MINUTES FROM THE MAY 11, 2015 MEETING OF SELECTED MEMBERS OF THE STATE PERSONNEL BOARD

Ms. Yerger moved to approve the Minutes from the May 11, 2015 meeting. Ms. Palmquist seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

VII. ACKNOWLEDGMENTS

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

- A. Anthony S. Montoya v. Department of Human Services, Office of Children, Youth and Families, Division of Youth Corrections, Marvin W. Foote Youth Services Center, State Personnel Board case number 2015G063.

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

- B. Joe Ward v. Department of Corrections, State Personnel Board case number 2015G064.

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

- C. Teresa Lister v. Department of Human Services, Office of Children, Youth and Families, Division of Youth Corrections, Lookout Mountain Youth Services Center, State Personnel Board case number 2015G070.

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

- D. Michael R. Hiller v. Department of Corrections, State Personnel Board case number 2015S007.

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

- Cases on Appeal to the Board and to Appellate Courts

Board Counsel Faley briefed the Board on cases before the Court of Appeals and advised that the oral argument for Williams has been set for August 11. The Board will need to discuss this in the July meeting. In the meantime Counsel will file for an extension this week as she will be unavailable on August 11 due to vacation plans.

B. OTHER BOARD BUSINESS

Director Shea-Reid announced that Keith Shandalow was hired as the new ALJ and will start June 29, 2015. In his private practice, Mr. Shandalow has many years of experience in employment law including state and federal discrimination law and litigation, sexual harassment, wage and hour, and wrongful termination among other areas. He has represented before the Board as a complainant's attorney in several cases and is very familiar with the state personnel system.

The Director reported that the 2015 Board Election process is underway. The candidate nomination period closed on June 15 and the petitions will be certified by Board staff. On July 7 eligible employees will be sent a letter providing them with a link to the on-line election site and biographies of the certified candidates. The voting period will run from July 8 to midnight on July 24, 2015.

The newly elected Board member will be attending the August Board meeting at which time the full Board will elect its officers. Mr. Peck, who is presently Vice-Chair, will assume the acting role of Board Chair for the July meeting.

The Director noted that changes continue to be made to the preliminary recommendations and the Board will see those changes in PRs by the July or August meetings based on input from the Board.

Director Shea-Reid announced that this will be Ms. Yerger's last Board meeting. She presented Ms. Yerger with a plaque that read:

"In appreciation of your five years as an elected Member of the State Personnel Board, the Board recognizes your significant contributions to its decisions through your wisdom, your integrity and your commitment to the Board's mission to protect and recognize merit as the basis for state employment. The Board especially thanks you for your leadership as Board Chair from 2014-2015 and as Vice Chair from 2012-2013. State Personnel Board and Staff."

Mr. Peck, who was not in attendance, asked that the Director read his prepared statement for the record. "I want to thank Sally Yerger for her dedicated and exemplary service to the Colorado State Personnel Board during these past five years culminating in her service this past year as Chair of the Board. Sally has been a wonderful colleague in every respect. Her intelligence and good judgment have informed our deliberations and set a high standard for us to follow in the years ahead. We will miss her greatly but not forget her."

The Director and Board members added that they shared the sentiments of Mr. Peck and expressed heartfelt thanks to Ms. Yerger and sadness at no longer having her on the Board.

Ms. Yerger concluded by saying that she has enjoyed her past five years of service on the Board and the company of intelligent and hard working individuals.

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

Michelle Brisette Miller, First Assistant Attorney General, thanked Ms. Yerger for her service to the Board.

IX. PROPOSED LEGISLATION AND/OR RULEMAKING

X. EXECUTIVE SESSION

At 10:03 a.m. Ms. Yerger made a motion to enter into Executive Session for the purpose of receiving legal advice on specific questions pursuant to Section 24-6-402(3)(a)(II), C.R.S. including discussion with counsel regarding the Preliminary Recommendation of Micki Perez-Thompson v. Department of Transportation, State Personnel Board case number 2014G095(C).

The motion was seconded by Ms. Salerno. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

Executive Session ended by consensus at 10:19 a.m.

XI. BOARD DELIBERATION

Following Executive Session and having received advice from Board Counsel, the Board re-entered public session.

Regarding Micki Perez-Thompson v. Department of Transportation, State Personnel Board case number 2014G095(C), Ms. Yerger moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Ms. Palmquist, Ms. Salerno, and Ms. Yerger.

The Board meeting ended by consensus at 10:25 A.M.

16TH

JUNE

(Handwritten signature)

DATED THIS 16th DAY OF AUGUST, 2015.

(absent and excused)

Neil Peck

[Redacted]

Vonda Hall, Member

[Redacted]

Michelle Palmquist, Member

Teresa Salerno, Member