

# State of Colorado



**John W. Hickenlooper.**  
*Governor*

**Rich Djokic**  
*Board Chair*

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

**State Personnel Board**  
633 17<sup>th</sup> Street, Suite 1320  
Denver, Colorado 80202-3604  
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## Meeting Minutes January 15, 2013

The State Personnel Board met in public session on Tuesday, January 15, 2013, at the Colorado State Personnel Board, 633 17<sup>th</sup> Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at 9:03 a.m. Board Members Rich Djokic, Garth Lucero, Anthony Marquez, Teresa Salerno, and Sally Yerger were present in person.

Dana Shea-Reid, Board Director; First Assistant Attorney General Eric Maxfield, Board Counsel; and Jane Sprague, Legal Assistant, were present in person.

### **I. REPORT OF KATHY NESBITT, STATE PERSONNEL DIRECTOR (EXECUTIVE DIRECTOR, DEPARTMENT OF PERSONNEL AND ADMINISTRATION [DPA])**

Deborah Layton-Root, Director of the Division of Human Resource (HR) Services, gave a report to the Board on behalf of Ms. Nesbitt as follows:

- DPA is focusing on the rules and Technical Guidance as a follow-up to the Emergency Rulemaking on January 2, 2013. Ms. Nesbitt gave a presentation to 100 people regarding the impact of the emergency rules on January 14 and will be addressing the HR Director's Forum on January 18, 2013.
- A Wellness Coordinator has been appointed and DHR is partnering with Colorado WINS in promoting wellness.
- The new Health/Life rates will be less than the 10% increase which was projected.
- The Safety/Risk Program has been relaunched.
- DHR has hired additional staffing: a Total Compensation Manager and a Safety Expert.

### **II. REQUESTS FOR RESIDENCY WAIVERS**

Director Shea-Reid reported that the Board received one request for an extension on a residency waiver from the Department of Corrections and has forwarded it to DPA/DHR's Skye Brunick for consideration.

### III. PENDING MATTERS

There were no Pending Matters before the Board this month.

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

- A. Alvin Sais v. Department of Corrections, State Personnel Board case number 2013S002.

Mr. Marquez moved to adopt the findings of fact and conclusions of law in the Order Granting Respondent's Motion to Dismiss and Referral to State Personnel Director. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Salerno, Ms. Yerger and Mr. Djokic.

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

- A. Patrick Roybal v. Trustees of the State Colleges in Colorado, Adams State University, State Personnel Board case number 2013G027.

Mr. Djokic moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing at which time the parties can raise the standing issue before the Administrative Law Judge again. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Salerno, Ms. Yerger and Mr. Djokic.

- B. Ray Miller v. Colorado School of Mines, State Personnel Board case number 2013G028.

Following Executive Session (see Section XII below), Mr. Djokic moved to remand the Preliminary Recommendation of the Administrative Law Judge for review by a non-issuing Administrative Law Judge, including the discussion and recommendation portions of the Preliminary Recommendation of the Administrative Law Judge. The Board's Order is made consistent with the Board's oversight and responsibility to determine requests for discretionary hearings in the state personnel system and, as a result of the order, Respondent's Expedited Motion to Recuse and Remand Matter for Preliminary Review and Recommendation is deemed moot. Ms. Yerger seconded the motion. The motion passed on the

affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Salerno, Ms. Yerger and Mr. Djokic.

- C. Tom Orell v. Colorado Mesa University, State Personnel Board case number 2013G034.

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- D. Alfritch D. Anderson v. Colorado Community College System, State Personnel Board case number 2013S010.

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

There were no Initial Decisions or other Final Orders of the Administrative Law Judges this month.

## **VII. REVIEW OF THE MINUTES FROM THE DECEMBER 18, 2012 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

Mr. Lucero moved to approve the Minutes of the December 18, 2012 meeting as submitted. Mr. Marquez seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms.

Yerger, and Mr. Djokic. Ms. Salerno abstained from voting because she was not present at the December 18, 2012 meeting.

## VIII. ACKNOWLEDGMENTS

### DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS DECEMBER 18, 2012 PUBLIC MEETING:

- A. Richard Riley v. Department of Corrections, State Personnel Board case number 2011B100 (July 12, 2012).

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

- B. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 (July 16, 2012).

The Board voted to deny Respondent's Motion for Oral Argument, to grant the Motion to Submit Errata to Replace Page One of Respondent's Opening Brief on Appeal to State Personnel Board, and to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision of the ALJ, with the exception of the following modifications to the ALJ's Order:

1. The Board rejects the ALJ's conclusion that there is an anti-gay culture in the Colorado State Patrol and finds that this conclusion is not supported by substantial evidence in the record. The conclusion that there is an anti-gay culture in the Patrol is not necessary to support the ALJ's conclusion of law that Respondent discriminated against Complainant on the basis of sexual orientation, which the Board adopts.
2. The last two sentences of the Order, "The Patrol will immediately incorporate sexual orientation into all existing diversity training programs. The Patrol will immediately designate a command-level point-of-contact for gay Patrol members" are stricken, because these remedies are not within the scope of the Board's authority under Board Rule 9-6.

- C. Calvin Jones v. Department of Labor and Employment, Workforce Development Programs, State Personnel Board case number 2012G069.

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

- D. Lea Mason v. Department of Transportation, Audit Division, State Personnel Board case number 2013G012.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge, to deny the petition for hearing, and to remand the grievance of the corrective action to Respondent for completion of the grievance process.

- E. Theresa K. Bradbury v. Department of Law, State Personnel Board case number. 2013G023.

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

## **IX. REPORT OF THE DIVISION OF HUMAN RESOURCES, DPA**

### **X. ADMINISTRATIVE MATTERS & COMMENTS**

#### **A. ADMINISTRATIVE MATTERS**

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Appeal Dismissed, Deborah Krieger v. Department of Human Services, Colorado Mental Health Institute at Pueblo, State Personnel Board case number 2012G039, Court of Appeals Number 2012CA690
- Mandate: Order Affirmed, Richard P. Mignogna v. Department of Regulatory Agencies, Public Utilities Commission, State Personnel Board case number 2011G040, Court of Appeals Number 2011CA2117

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

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

There were no comments.

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

Mr. Djokic stated that follow-up of the Temporary/Emergency Rulemaking needed to be conducted in order to repeal Board Rule 2-13. This follow-up would be done at the end of the regular meeting today. Ms. Shea-Reid stated that Chapter 7 revisions would be considered at the Permanent Rulemaking on January 30, 2013, which will be a joint rulemaking of the Board and State

Personnel Director. She noted that she was distributing a replacement of pages 62-63 to the Board members' packets of rules to show that for Board Rule 8-46.1, the exceptions to the rule had been deleted to comply with the proper statutory authority.

## **XII. EXECUTIVE SESSION**

### **A. Executive Session Minutes from December 18, 2012.**

At 9:40 A.M., Mr. Djokic made a motion to enter Executive Session for the purpose of discussing matters required to be kept confidential pursuant to § 24-6-402(3), C.R.S., including review, approval, and/or amendment of minutes from the Board's executive session on December 18, 2012; personnel matters requested to be kept confidential, pursuant to § 24-6-402(3)(b)(I), C.R.S.; and receiving legal advice on specific legal questions, pursuant to § 24-6-402(3)(a)(II), C.R.S., including Miller v. Colorado School of Mines, Orell v. Colorado Mesa University, and Anderson v. Colorado Community College System (three Preliminary Recommendations of the Administrative Law Judge). The motion was seconded by Mr. Marquez. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Salerno, Ms. Yerger, and Mr. Djokic.

Executive Session ended by consensus at 10:40 A.M.

## **XII. REPEAL OF BOARD RULE 2-13**

At the end of the regular Board meeting, at 10:58 A.M., the Board entered a follow-up to the Temporary/Emergency Meeting of January 2, 2013. Mr. Djokic stated that during the January 2, 2013 Temporary/Emergency Rulemaking, Board Rule 2-13 had been inadvertently missed. He then made a motion to repeal Board Rule 2-13 and also moved that the Board finds, as required by section 24-4-103(6)(a), C.R.S., that immediate adoption of these rules is imperatively necessary to comply with state law, namely, Amendment S's changes to the state personnel system, which took effect January 2, 2013. The Board further finds that compliance with the requirements of section 24-4-103 would be contrary to the public interest. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Mr. Lucero, Mr. Marquez, Ms. Salerno, and Ms. Yerger. The rulemaking ended at 11:00 A.M.

The Board meeting ended by consensus.

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**DATED THIS 19<sup>th</sup> DAY OF FEBRUARY, 2013.**

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Rich Djokic, Board Chair

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Anthony Marquez, Board Vice Chair

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Garth Lucero, Member

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Teresa Salerno, Member

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Sally Yerger, Member