

State of Colorado



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Meeting Minutes November 19, 2013

The State Personnel Board met in public session on Tuesday, November 19, 2013, at the Colorado State Personnel Board, 1525 Sherman Street, 4th Floor, Denver, Colorado 80203. There was no Board meeting on October 15, 2013, due to lack of a quorum.

The meeting was called to order at 9:05 a.m. Board Members Vonda Hall, Garth Lucero, Neil Peck, and Sally Yerger were present in person. Board Member Teresa Salerno was absent.

Dana Shea-Reid, Board Director; Assistant Attorney General Andrea Faley, 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])

Ms. Nesbitt reported to the Board regarding the status of initiatives and activities in DPA, as follows:

- DPA and the Division of Human Resources (DHR) are adjusting to the recent move to 1525 Sherman Street.
- In the Governor's report on accomplishments, DPA noted a new strategy being developed for supplier diversity by directing interested vendors to the DPA site "Access Colorado";
- The new DPA website was successfully launched and is a more user-friendly site for stakeholders;
- For its clean air commitment using alternative fuels, DPA purchased 80 new CNG vehicles and 73 have been delivered;
- A new address confidentiality program has been initiated by DPA to protect crime or abuse victims;
- DPA is in the process of digitizing systems, including human resources, finance and archives, in a joint effort with the Secretary of State and the State Librarian;

- Laurel Davies was introduced by Ms. Nesbitt as the new DPA Human Resources Director.

Deborah Layton-Root, State Chief HR Officer, provided the report from DHR, as follows:

- \$16.1 million budget line item has been authorized for a new HRIS (Human Resources Information System) system to be implemented in partnership with OIT;
- DHR conducted a “Train the Trainer” for new employee orientation on November 15, 2013; the orientation includes a recorded “fire side chat” from the Governor;
- The First Floor at 1525 Sherman has two training rooms and a 130-seat conference room for meetings with agencies;
- Reports from the Employee Engagement Survey will be available in January or February 2014;
- In the restructuring effort of performance management and the rating system, DHR has formed a committee of HR Directors and SPB Director Shea-Reid to study and develop a code of conduct and progressive discipline policy;
- In its audit of prescription benefits, the Segal Group has discovered \$1.4 million in savings; Segal is involved in the new RFP process that is underway;
- The Wellness Program is currently serving 32% of state employees.

II. PENDING MATTERS (from October 15, 2013)

- A. Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 (Request and response to request to remove decisions from website).

Mr. Peck moved to deny Respondent’s Request to Remove Initial Decision of the Administrative Law Judge and Order Awarding Back Pay and Front Pay from State Personnel Board Website. Ms. Hall seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, and Ms. Yerger

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

There were 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. Patricia Aragon v. Department of Revenue, Title and Registrations Section, State Personnel Board case number 2013G084.

Ms. Hall recused herself from participation in this matter and left the meeting room.

Ms. Yerger moved to adopt the Preliminary Recommendation of the Administrative Law Judge, deny Complainant's petition for hearing, and refer the matter to the Personnel Director for further action, as appropriate. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Peck, and Ms. Yerger. Ms. Hall abstained from voting.

Ms. Hall returned to the meeting room after the voting had concluded.

- B. Mark E. Southerland v. Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center, State Personnel Board case number 2014S003.

Mr. Lucero moved to adopt the Preliminary Recommendation of the Administrative Law Judge, deny Complainant's petition for hearing, and refer the matter to the Personnel Director for further action, as appropriate. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, and Ms. Yerger.

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

- A. Mark Mitchell v. University of Colorado Boulder, Department of Intercollegiate Athletics, Athletic Game Management and Facility Operations, State Personnel Board case number 2013B116 (September 9, 2013).

- B. Joanne Brown v. Department of Human Services, Colorado Mental Health Institute of Pueblo, State Personnel Board case number 2012B128 (September 12, 2013).

- C. Renee Ryan v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2013G025 (September 12, 2013).

Director Shea-Reid informed the Board that there have been appeals filed in the Brown and Ryan cases, but not in the Mitchell matter.

VI. REVIEW OF THE MINUTES FROM THE SEPTEMBER 17, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Mr. Lucero moved to amend the Minutes from the September 17, 2013 meeting, deleting in the second paragraph "Ms. Salerno was delayed" to reflect that Ms. Salerno was present. Mr. Peck seconded the motion. The motion to approve the minutes as amended passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, and Ms. Yerger. In future Board meetings the minutes will note the arrival time for Board members who are not present for roll call but, otherwise, are in attendance.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS SEPTEMBER 17, 2013 PUBLIC MEETING:

- A. Petition for Declaratory Order of "Pro Se" Sgt. Sheldon Reneau, Sgt. Mary Martinez, C/O Kristina Grubb, C/O Mary Moore, and Sgt. Brian Thomas, State Personnel Board case number 2014D001.

The Board voted to deny the Petition for Declaratory Order on the grounds of lack of jurisdiction.

- B. Karen McGrane v. Department of Human Services, Colorado State Veterans' Nursing Home at Fitzsimons, State Personnel Board case number 2013G076.

The Board voted to adopt and grant the petition for hearing on the issue of Whistleblower Act violation.

- C. Kimberly Hardesty v. Department of Human Services, Division of Youth Corrections, Zebulon Pike Youth Services Center, State Personnel Board case number 2013G080.

The Board voted to adopt and grant the petition for hearing on Complainant's claims of Colorado Anti-Discrimination (CADA) retaliation and State Employee Protection Act (Whistleblower Act) violation.

DECISION OF THE STATE PERSONNEL BOARD MADE AS A RESULT OF A LACK OF QUORUM ON OCTOBER 15, 2013:

- D. Tina Romero v. Department of Revenue, State Personnel Board case number 2013G098.

The Board issued a Notice of Lack of Quorum in this case, pursuant to § 24-4-105(14)(b)(II), C.R.S., denying Complainant's petition for hearing, making the Preliminary Recommendation of the Administrative Law Judge

a final agency order, and referring the matter to the State Personnel Director for further action, as appropriate.

VIII. REPORT OF THE DIVISION OF HUMAN RESOURCES, DPA – See Section I.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Order Affirmed, Larry Brown v. Colorado State University, Housing & Dining Services, State Personnel Board case number 2012G061, Court of Appeals Number 2012CA1366

Board Counsel Faley commented that the Brown Mandate is an unpublished opinion which affirmed the decisions of the ALJ and the Board.

B. OTHER BOARD BUSINESS

Director Shea-Reid informed the Board that staff prepared for the past few weeks for the move to 1525 Sherman and has made the successful transition to the new offices.

- The new SPB website is working very well and provides more user-friendly, intuitive resources including policies, forms, assistance for pro se litigants and cases.

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

X. PROPOSED LEGISLATION AND/OR RULEMAKING

Director Shea-Reid reported that the AG Opinion was issued on November 15, 2013, and the rules were filed November 18, 2013, for rulemaking conducted on November 4.

XI. EXECUTIVE SESSION

A. Executive Session – Consideration of the Minutes of September 17, 2013.

At 9:45 A.M., Mr. Lucero made a motion to enter into 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 September 17, 2013, held over from October for lack of a quorum. The motion was

seconded by Ms. Hall. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, and Ms. Yerger. Executive Session ended by consensus at 9:50 A.M.

XII. RETURN TO OPEN SESSION

Returning to open session, Director Shea-Reid inquired about the Board's transition to the new location for Board meetings at 1525 Sherman Street. Parking in the immediate area of the Capitol Complex may be problematic as parking lots tend to fill early in the morning. The cost of parking varies from lot-to-lot.

The Board agreed that acquiring a table top lectern for presentations would be appropriate since the Board no longer has use of a courtroom podium. The Board expressed concerns about the observed lack of security on the main floor of the building and the 3rd and 4th floors where the Board meets and the courtrooms are located. Ms. Yerger inquired about the discontinued use of the Magnatron screening device. Mr. Peck commented that all courthouses and most public buildings have security screening which is a part of doing business. Director Shea-Reid suggested that the topic be included on the December agenda for further discussion to include representative from DPA who may be able to respond to Board questions.

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

DATED THIS 17th DAY OF DECEMBER, 2013.

Garth Lucero, Board Chair

Vonda Hall, Member

Neil Peck, Member

Sally Yerger, Member