

State of Colorado



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Governor

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Board Director

State Personnel Board
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Meeting Minutes February 19, 2013

The State Personnel Board met in public session on Tuesday, February 19, 2013, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at 9:00 a.m. Board Members Rich Djokic, Garth Lucero, Anthony Marquez, and Sally Yerger were present in person. Board Member Teresa Salerno was absent.

Dana Shea-Reid, Board Director; Assistant Attorney General Catherine Shea, 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 Joint Permanent Rulemaking of January 30, 2013. Ms. Nesbitt is beginning the review of rules in Chapters 5, 6 and 8, and is conducting web conference calls, meeting with HR consulting groups, and will publish Frequently Asked Questions (FAQs) about the rules.
- On Friday, February 22, 2013, Ms. Nesbitt will be conducting an all-leaders meeting regarding customer service and training.
- Each DPA division will be conducting 360 evaluations on Executive Leaders.
- DPA is moving in August 2013 to 1525 Sherman and all DPA divisions will be housed together after the move.
- DHR has undergone a reorganization, reducing its 6 units to 3 units, and will be taking a more consultative approach.
- The new Health/Life rates will be less than the 10% increase which was projected. Open Enrollment is scheduled for April 30-May 22, 2013.
- On March 29, 2013, DHR will be hosting a one-day "HR University" which will include workshops on legal updates and other topics.

- The new Wellness Coordinator has begun work and a Total Comp Manager has also been selected with a 3/11/13 start date.

II. REQUESTS FOR RESIDENCY WAIVERS

Director Shea-Reid reported that the Board has received no requests for residency waivers this month.

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. Edward W. Geitl v. Department of Public Safety, State Personnel Board case number 2011B066.

Mr. Marquez moved to adopt the findings of fact and conclusions of law in the Administrative Law Judge's May 9, 2012 Order Regarding Back Pay Award; to vacate the Administrative Law Judge's September 19, 2012 Order Reaffirming May 9, 2012 Order Regarding Remedy, finding that the September 19, 2012 Order Reaffirming May 9, 2012 Order Regarding Remedy did not extend the time to appeal the May 9, 2012 Order Regarding Back Pay Award, as any appeal of the May 9, 2012 Order was to be filed within 30 days of that Order and that the issues raised in Respondent's appeal were addressed in the May 9, 2012 Order and therefore were not timely appealed to the Board. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger and Mr. Djokic.

In a separate motion, pursuant to § 24-50-125.5, C.R.S., and Board Rule 8-38, Mr. Marquez moved to award Complainant his attorney fees incurred for proceedings before the Board after issuance of the September 19, 2012 Order because: 1) Respondent's appeal was groundless, as it did not appeal the issues addressed by the ALJ in her September 19, 2012 Order but rather sought untimely to appeal the issues addressed in the May 9, 2012 Order; and 2) Respondent's filing of an untimely appeal was stubbornly litigious, as it justified failing to fully comply with the ALJ's May 9, 2012 Order Regarding Back Pay Award. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger and Mr. Djokic.

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

- A. Cory Cutting v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2013G015.

Ms. Yerger moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing. 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.

- B. Rene Ryan v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2013G025.

Mr. Djokic moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing. 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.

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

Mr. Marquez moved to adopt the Preliminary Recommendation of the Administrative Law Judge After Remand and grant Complainant's petition for hearing. Ms. Yerger seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger and Mr. Djokic.

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

Mr. Marquez moved to adopt the Preliminary Recommendation of the Administrative Law Judge After Remand and grant Complainant's petition for hearing. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger and Mr. Djokic.

- E. Jacob Phillips v. Board of Directors for the Auraria Higher Education Center, State Personnel Board case number 2013G042.

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 State Personnel Director for further action as

appropriate. 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.

- F. Jeromy Goodson v. University of Colorado Boulder, Police Department, State Personnel Board case number 2013S006.

Mr. Djokic moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing. 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.

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

Mr. Marquez moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing as to Complainant's claim of discrimination based on race/color and to deny the petition for hearing as to Complainant's claim of discrimination based on organizational membership. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger and Mr. Djokic.

- H. Misgana Tesfaye v. Department of Revenue, Taxation Division, State Personnel Board case number 2013S018.

Mr. Djokic moved to adopt the Preliminary Recommendation of the Administrative Law Judge, deny Complainant's petition for hearing, and refer the matter to the State Personnel Director for further action as appropriate. 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.

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

- A. Cornelius Foxworth v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2011B086 (January 11, 2013).

Director Shea-Reid stated that there was no appeal filed in this matter.

- B. Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089 (January 24, 2013).

Ms. Shea-Reid reported that Ms. Kirkmeyer had filed a Designation of Record and Notice of Appeal in her case.

- C. Arthur Robinson v. University of Colorado at Denver, State Personnel Board case number 2012B131 (January 28, 2013).

The Director stated that Mr. Robinson had filed a petition for reconsideration of the Initial Decision of the Administrative Law Judge.

- D. Ranger Geremaia v. Department of Transportation, State Personnel Board case number 2013B029 (February 4, 2013).

Ms. Shea-Reid reported that the time for appeal in this case had not yet run.

VII. REVIEW OF THE MINUTES FROM THE JANUARY 2, 15, and 30, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Mr. Marquez moved to approve the Minutes of the January 2, 2013 meeting as submitted. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger, and Mr. Djokic.

Mr. Marquez moved to approve the Minutes of the January 15, 2013 meeting as submitted. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger, and Mr. Djokic.

Mr. Marquez moved to approve the Minutes of the January 30, 2013 meeting as submitted. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger, and Mr. Djokic.

VIII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JANUARY 15, 2013 PUBLIC MEETING:

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

The Board voted to grant Respondent's Motion to Strike Complainant's Reply Brief based on the untimely filing of Complainant's Reply Brief and 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.

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

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

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

The Board voted 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, and to deem moot Respondent's Expedited Motion to Recuse and Remand Matter for Preliminary Review and Recommendation.

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

The Board voted 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, and to deem moot Respondent's Expedited Motion to Recuse and Remand Matter for Preliminary Review and Recommendation.

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

The Board voted 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.

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

X. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Appeal Dismissed, William A. Buckley v. Front Range Community College, State Personnel Board case number 2012B016, Court of Appeals No. 2012CA2145

- Board Counsel Shea reported that Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028 has been appealed to the Court of Appeals.

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

Director Shea-Reid stated that the Board members were being provided with copies of the newly adopted rules which are effective March 30, 2013, as well as a set of the pre-rulemaking rules which are currently effective, and will continue to be useful as reference in certain cases.

XII. EXECUTIVE SESSION

A. Executive Session Minutes from January 15, 2013.

At 11:00 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 January 15, 2013; and two personnel matters requested to be kept confidential, pursuant to § 24-6-402(3)(b)(I), C.R.S. The motion was seconded by Ms. Yerger. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Marquez, Ms. Yerger, and Mr. Djokic.

Executive Session ended by consensus at 11:30 A.M.

The Board meeting ended by consensus.

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DATED THIS 21st DAY OF MAY, 2013.

Rich Djokic, Board Chair

Anthony Marquez, Board Vice Chair

Garth Lucero, Member

Sally Yerger, Member