

State of Colorado



John W. Hickenlooper.
Governor

Rich Djokic
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Meeting Minutes May 21, 2013

The State Personnel Board met in public session on Tuesday, May 21, 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 9:03 a.m. Board Members Rich Djokic, Garth Lucero, Anthony Marquez and Sally Yerger were present in person. 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])

Ken Johnson, Manager, Consulting Services and Development, Division of Human Resources (DHR), gave a report to the Board on behalf of Ms. Nesbitt and Deborah Layton-Root, Chief Human Resources Officer, regarding the status of initiatives as follows:

- DPA's Executive Management Team has engaged in several strategic planning sessions for goal setting, budget decisions, and legislative items. The goals of the planning are: improving customer service, reinvesting in the workplace, and upgrading systems and technology.
- In DHR, the performance cycles are in the final stages of completion and statistics on where employee ratings fall on the bell curve will be reviewed.
- New employee orientation has been finalized as a 4-hour component that can be used by all state agencies, and will include a video welcome message from the Governor.
- Four on-line mandatory compliance training programs are being developed for DPA: harassment, substance abuse, domestic violence, and workplace violence. Each program is 30 minutes long.

II. PENDING MATTERS

- A. Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028.

Mr. Marquez moved to deny Respondent's Motion for Personnel Board's Reconsideration of ALJ's Order Denying Respondent/Appellant's Motion for Stay Pending Appeal. 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.

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

There were no Preliminary Recommendations of the Administrative Law Judges for review before the Board this month.

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

- A. Al Paiz v. Department of Human Services, Division of Youth Corrections, Lookout Mountain Youth Services Center, State Personnel Board case number 2013B068(C) (April 22, 2013).

Director Shea-Reid reported that no appeal had been filed in this matter.

VI. REVIEW OF THE MINUTES FROM THE FEBRUARY 19, MARCH 19, AND APRIL 16, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Mr. Marquez moved to approve the Minutes of the February 19, 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 April 16, 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.

The Minutes of the March 19, 2013 meeting were tabled until the June meeting because one of the three Board members present at the March meeting was not in attendance at the May meeting, so the March minutes could not be approved.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS APRIL 19, 2013 PUBLIC MEETING:

- A. Floyette Peaker v. Department of Human Services, Colorado State Veterans Nursing Home at Fitzsimons, State Personnel Board case number 2013G036.

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

- B. Maurice G. Carter v. Department of Transportation, State Personnel Board case number 2013G037.

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

- C. Rita Rittenmeyer v. Department of Transportation, State Personnel Board case number 2013G041.

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

- D. Michael Zordani v. Department of Corrections, Denver Complex, State Personnel Board case number 2013G055.

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

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

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts
- New look for website

Director Shea-Reid reported on the progress of the DPA website, a project which includes the State Personnel Board. The “go live” date has been delayed to the end of June. Ms. Sprague has transferred the information

from the old website to a holding place for insertion into the new site. Mr. Lucero asked about the functionality of the new website with regards to searchability. Director Shea-Reid responded that the existing contents have been converted to searchable pdf format using an alpha index, which Board staff has created. Annotations for case research will be reduced to the past ten years.

B. OTHER BOARD BUSINESS

The selection process is being completed to fill the vacant administrative law judge position. Director She-Reid thanked Board members Sally Yerger and Tony Marquez for their participation in the preliminary screening and interview process and Monica Cortez-Sangster, HR Director, for her assistance.

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

There were no comments.

X. PROPOSED LEGISLATION AND/OR RULEMAKING CONTINUED FROM MAY 7, 2013

A. Deliberation and voting on proposed Board Rule 8-59

The Board reviewed revisions to Board Rule 8-59 provided by Board Counsel Faley. The Board determined that the proposed language addressed the Board's concerns with the initial changes to the rule as presented in the May 7 joint rulemaking and that the rule was consistent with Colorado Rule of Civil Procedure (C.R.C.P.) 45 regarding subpoenas.

Mr. Djokic made a motion to adopt the Board Rule 8-59 as proposed by Board Counsel, and read the content of the rule as amended. The content of the rule states:

Upon an oral or written request of a party or counsel for a party at least 3 business days in advance, an administrative law judge shall issue a subpoena or subpoena duces tecum requiring the attendance of a witness or the production of documentary evidence, or both.

- A. The subpoena or subpoena duces tecum shall be served on the witness to whom it is directed in the same manner as subpoenas served in proceedings in the district courts for the State of Colorado pursuant to C.R.C.P. 45. A subpoena for testimony at a hearing must be served at least 48 hours prior to the commencement of the hearing. A subpoena for testimony in a deposition shall be served at least 7 days before the deposition. A subpoena duces tecum commanding a person to produce records or tangible things shall be served at least 14 days before compliance is required. Immediately following service of a subpoena, the party or attorney who issues the subpoena, shall serve a copy of the subpoena on all parties.

- B. Except for witnesses subpoenaed on behalf of the State of Colorado, or an officer or department of the State of Colorado, witnesses subpoenaed for testimony pursuant to this rule shall be paid the same fees for mileage as are paid to witnesses in the district courts of the State of Colorado. The party requesting that the subpoena be issued shall pay such fees to the witness at the time the subpoena is served as required by this rule.
- C. Consistent with C.R.C.P. 45 criteria for mandatory or discretionary quashing or modification of a subpoena, upon the failure of a party or counsel to comply with the requirements of either subparagraphs A or B of this rule, the party or witness subject to the subpoena may petition the administrative law judge for an order quashing or modifying such subpoena. The administrative law judge, in his or her discretion, may also award attorney fees for such non-compliance pursuant to Board Rule 8-34.
- D. Upon failure or refusal of any witness to comply with a subpoena issued and served upon a witness under this rule, either party may petition the district court for the City and County of Denver for an order enforcing the subpoena, and upon failure or refusal to comply, for an order citing such witness as in contempt for such failure or refusal. The procedure for such contempt proceedings shall be governed pursuant to § 24-4-105(5), C.R.S. (7/1/13)

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.

- B. Reconsideration of proposed Board Rule 8-41(A) (after Executive Session)

XI. EXECUTIVE SESSION

- A. Executive Session Minutes of February 19, 2013.
- B. Attorney advice concerning legal implications of records requests to Board.
- C. Attorney advice concerning a party's communication with Board counsel or Board staff regarding matters pending before the Board.
- D. Attorney advice on proposed Board Rule 8-41(A).

XII. BOARD DELIBERATION

- A. Board deliberation and decision, if any, regarding XI. B.
- B. Board deliberation and decision, if any, regarding XI. C.
- C. Board deliberation and decision, if any, regarding XI. D.

Following Executive Session, Mr. Djokic provided the background for Board Rule 8-41(A), stating that it was adopted as amended during joint rulemaking on May 7, 2013. It was necessary for the Board to reconsider the adoption in order to clarify the rule by removing “or dismissal” from the adopted language because of the confusion it would cause. A failure in trial service results in reversion to a certified position; dismissal is not part of the discretionary hearing process that pertains to the other situations described in Board Rule 8-41(A); and dismissal results in a mandatory hearing upon appeal.

Mr. Djokic made a motion to reconsider the adopted Board Rule 8-41(A) to remove “or dismissal” from that rule. 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. Djokic stated it was the Board’s intention to have a Colorado Open Records Act (CORA) policy developed for the Board’s guidance, as well as clarification for Board staff with regards to CORA records requests to the Board. Mr. Lucero expressed his agreement, stating that the CORA policy should be put on the Board’s website. It was agreed that the Board Director and Board Counsel will draft a CORA policy to be adopted by the Board.

Following the discussion and deliberation of these items, the Board meeting ended by consensus.

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DATED THIS 18th DAY OF JUNE, 2013.

Rich Djokic, Board Chair

Anthony Marquez, Vice Chair

Garth Lucero, Member

Sally Yerger, Member