

State of Colorado



John W. Hickenlooper
Governor

Garth Lucero
Acting Board Chair

Dana Shea-Reid
Board Director

State Personnel Board
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Meeting Minutes July 16, 2013

The State Personnel Board met in public session on Tuesday, July 16, 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 9:02 a.m. Board Members Garth Lucero, Neil Peck, Teresa Salerno, and Sally Yerger were present in person.

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

Director Shea-Reid introduced and welcomed newly appointed Board Member Neil Peck to the Board.

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

Executive Director Nesbitt greeted the Board and welcomed Mr. Peck and designated Deborah Layton-Root, Chief Human Resources Officer, to report to the Board on behalf of Ms. Nesbitt, regarding the status of initiatives and activities, as follows:

- A draft of the total compensation report has been submitted to Henry Sobenet and Roxanne White. The report recommends across-the-board salary increases, merit pay increases, and increases to those who are 7.5% below market.
- The Segal Group conducted a benefits survey and data indicates that no increase in premiums will be necessary for FY2014 and that leave practices are comparable to market.
- Ken Johnson, Manager, Consulting Services and Development, Division of Human Resources (DHR), is conducting the second round of an engagement survey in late October, with results published in December.

- DPA is also working with Segal on implementing the Affordable Care Act (ACA), which has a one-year penalty reprieve granted by the federal government.

II. PENDING MATTERS

There were no Pending Matters before the Board this month.

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

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

Ms. Yerger moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

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

- A. Tina M. Burnette v. University of Colorado at Colorado Springs, Department of Public Safety, State Personnel Board case number 2013G059.

Ms. Salerno moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing on the Whistleblower Act claim and deny it on the discrimination claim. Mr. Lucero seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

- B. Stephen D. Harrison v. Department of Human Services, Division of Facilities Management, State Personnel Board case number 2013S031.

Ms. Salerno moved to adopt the Preliminary Recommendation of the Administrative Law Judge 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. Peck, Ms. Salerno, and Ms. Yerger.

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

- A. Isis Rich v. Department of Revenue, Division of Motor Vehicles, Driver's License Section, State Personnel Board case number 2013B049 (June 27, 2013).

Director Shea-Reid informed the Board that for an appeal of this matter, a Designation of Record is due on July 17, 2013.

VI. REVIEW OF THE MINUTES FROM THE JUNE 18, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Ms. Yerger moved to approve the Minutes of the June 18, 2013 meeting as submitted. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Ms. Salerno, and Ms. Yerger. Mr. Peck abstained from voting as he was not present at the June 18, 2013 meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 18, 2013 PUBLIC MEETING:

- A. Barbara Kirkmeyer v. Department of Local Affairs, State Personnel Board case number 2007G089 (January 14, 2010; January 24, 2013).

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to make the Initial Decision of the Administrative Law Judge dated January 24, 2013, an Order of the Board.

- B. Lisa Parker v. Department of Human Services, Division of Youth Corrections, Gilliam Youth Services Center, State Personnel Board case number 2013G066

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

- C. Victor Meyers v. Department of Corrections, Trinidad Correctional Facility, State Personnel Board case number 2013G071.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and 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
- Order of Court (denying Petition for Writ of Certiorari) and Mandate: Order Affirmed In Part and Reversed in Part - Maria Berumen and Dawn Adams v. Department of Human Services, Wheat Ridge Regional Center, State Personnel Board case number 2010B087(C), Court of Appeals No. 11CA0640

Board Counsel Faley addressed the Board regarding Berumen, explaining the issue of Respondent's failure to provide written notice to Complainants that they could have representation at their Board Rule 6-10 meeting; the Court of Appeals reversed the Board's decision; and the Petition for Certiorari was denied. She stated that the Board may wish to clarify Board Rule 6-10 through rulemaking to state what is required, i.e. written notice that an employee may have representation at a Board Rule 6-10 meeting. Ms. Layton-Root stated that appointing authorities are encouraged to provide notice of a Board Rule 6-10 meeting, including information regarding the employee's right to have a representative. In response to Ms. Yerger's inquiry, Ms. Layton-Root stated that a template for a Board Rule 6-10 notice is provided to HR personnel and appointing authorities. Michelle Brissette Miller, First Assistant Attorney General for the Employment Personnel Unit, said that 99.9% of the time, an employee is given advanced notice in writing about why, when and where a Rule 6-10 meeting will be held.

Board Counsel Faley noted the Robinson case from the Case Status Report and stated that Mr. Robinson failed to file an opening brief in his appeal of his Initial Decision of the ALJ; his Board appeal was dismissed; and his motion to reconsider was denied for lack of good cause. She suggested that at the Court of Appeals, a party might move to dismiss Mr. Robinson's case because the Board's review was incomplete.

B. OTHER BOARD BUSINESS

- Board member election update

Director Shea-Reid reported that nominating petitions closed on July 8 and there are two candidates certified for election: Vonda Hall and Guy Santo. The online election will be July 22 through August 5 for certified employees. She hopes to announce the newly elected Board member within 48 hours of the close of the election with expectations that the new Board member will be in attendance at the August 20 Board meeting.

- Discussion of election of Board officers

In response to an inquiry by Board Member Yerger, Director Shea-Reid explained that, according to statute, one Board officer must be a gubernatorial appointee. The Board discussed the advisability of holding the election in August, instead of the traditional month of July, in order to include the member to be elected on August 5. Mr. Lucero made a motion to defer the Board officer elections until August 20 when the Board will have all five members. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following members: Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

- Recognition of Rich Djokic's service

Because he was unable to attend in person to receive a plaque, Director Shea-Reid acknowledged Mr. Djokic's years of service to the Board and read into the record the following statement as it appears on the plaque:

"In appreciation of your seven years of service to the Board as an elected member, including six years as Board Chair, the members of the State Personnel Board and Board staff wish to acknowledge and to thank you for your exemplary leadership and significant contributions to the Board and its mission. Members of the State Personnel Board, June 30, 2013."

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

There were no comments.

X. PROPOSED LEGISLATION AND/OR RULEMAKING

XI. EXECUTIVE SESSION

- A. Executive Session Minutes of June 18, 2013.

At 10:25 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 June 18, 2013. The motion was seconded by Ms. Yerger. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger. Executive Session ended by consensus at 10:28 A.M.

Returning to Open Session, Board Counsel Faley reminded the Board of the Open Meetings' requirement, which stipulates two or more Board members constitute a meeting, and this would include email correspondence by two or more Board members.

A training program is being completed for Board members and staff in judicial ethics, specifically conflicts of interest. The training will be about 90 minutes long and is planned for September 17, 2013, after the Board meeting.

As part of Board procedures to avoid conflicts of interest, in addition to an annual disclosure, Board members will be required to sign a monthly disclosure at each Board meeting.

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The Board meeting ended by consensus at 11:00 A.M.

DATED THIS 20th DAY OF AUGUST, 2013.

Garth Lucero, Acting Board Chair

Neil Peck, Member

Teresa Salerno, Member

Sally Yerger, Member