

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 August 20, 2013

The State Personnel Board met in public session on Tuesday, August 20, 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 Garth Lucero, Neil Peck, 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.

Acting Board Chair Lucero began the meeting by explaining that in July, it was expected that a new Board member would be elected, would be seated for the August 20 Board meeting, and would participate in the election for Board officers. The July election for a new Board member was nullified because of concerns that eligible employees did not receive voting information in accordance with statutory requirements. A second election has commenced August 20 and closes September 9. The newly elected Board member will be seated by September 17. Mr. Peck moved to defer the Annual Board Officer Election to the September meeting in order that a full Board can participate. 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.

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

Executive Director Nesbitt greeted the Board and introduced Kara Veitch, the new Deputy Executive Director for DPA. Deborah Layton-Root, Chief Human Resources Officer, reported to the Board on behalf of Ms. Nesbitt, regarding the status of initiatives and activities, as follows:

- DPA will be engaging in rulemaking in Chapter 3 to clarify the rule on merit; Chapter 5 regarding Family Medical Leave to grant FML in a "rolling" calendar year; and Chapter 11 regarding benefits for those in civil unions and to clarify the enrollment period. The Human Resources Community has been asked to

submit other desired changes by November 1, with the target effective date of the new rules of January 1, 2014.

- According to the Total Compensation Study done by Segal, on average, state employees' total compensation is 3.8% below market. The Governor is expected to provide a response to the August 1, 2013 report by November 1.
- A committee of HR Directors and including Dana Shea-Reid, has been created to develop proposed changes to performance management, referred to as "the two roads proposal," which will separate conduct and behavior from performance.
- Employee recognition is being evaluated to expand and define the program for exceptional performance.
- New employee orientation will be rolled out in September with a guide and handbook for agency use.
- Thirteen new Technical Guides have been developed and are now on the website. More will follow as a result of Amendment "S" and the Governor's Talent Agenda.

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. Richard L. Homann v. Department of Public Safety, Division of Fire Prevention & Control, State Personnel Board case number 2013B004 (March 21, 2013).

Ms. Salerno moved to deny Respondent's Request for Oral Argument. Ms. Yerger seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Peck, Ms. Salerno, Ms. Yerger, and Mr. Lucero.

Mr. Peck moved to adopt the findings of fact and conclusions of law in the Order Granting Complainant's Motion for Summary Judgment. 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. Jill Gunderson v. Department of Human Services, Office of Enterprise Partnerships, State Personnel Board case number 2013G073.

Mr. Peck moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny Complainant's petition for hearing; Complainant shall have ten days from the issuance of this decision to grieve Respondent's rescission of flex time. 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. Mark E. Southerland v. Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center, State Personnel Board case number 2013S013.

Mr. Peck 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. 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.

- C. Randolph Reyes v. Department of Transportation, State Personnel Board case number 2013S039.

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. 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.

V. 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.

VI. REVIEW OF THE MINUTES FROM THE JULY 16, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Mr. Lucero moved to approve the Minutes of the July 16, 2013 meeting as submitted. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 16, 2013 PUBLIC MEETING:

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

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

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

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge, to grant the petition for hearing on the Whistleblower Act claim, and to deny the petition for hearing on the discrimination claim.

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

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

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

Ms. Salerno asked Ms. Layton-Root if the state was looking at the benefits trend of health insurance exchanges. Ms. Layton-Root stated that the state was aware of exchanges, but DPA has had no discussion whether to move to exchanges or not. Colorado has a higher than average age for insured employees, and although Colorado is rated as one of the healthiest states in the union, the rates are determined by region.

Mr. Lucero inquired about the total compensation survey which indicates employees are either way over or way under market and was curious about the differentiation. Ms. Layton-Root said the state has used various sources for salary data, which resulted in some discrepancies. World at Work is now being used and should be able to provide better market data for state positions.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Appeal Dismissed without prejudice – Brett L. Williams v. Department of Public Safety, Colorado State Patrol, State

B. OTHER BOARD BUSINESS

- Conflict of Interest Policy

Director Shea-Reid stated that Board Counsel Andrea Faley has worked with her on developing the conflict of interest policy and a Board disclosure form. Board Counsel Maxfield recommended that: (1) the Board make a record of any conflicts of interest; (2) Board members advise the Director the nature of the conflict and recuse from Board business if necessary. The Director will amend the draft policy to reflect changes in the disclosure process.

Board Counsel Maxfield suggested that the Board should consider asking the Director to develop a delegation policy in order to deal with motions on oral argument, extensions of time, etc.

- Letter from Candidate Regarding Board Election

Director Shea-Reid began this discussion by stating that she and the Board members had received two letters from Guy Santo that laid out his issues with the first Board Election. In addition:

- The July Election was nullified due to untimely notice.
- For the second Board Election, she used the Governor's Office of Communication to send an all-employee email blast.
- The crash of the system, due to technical error, was fixed by 9:00 A.M. on the opening day of the second Board Election.
- The Board is at a disadvantage in getting the word out because *Stateline* is no longer published and the payroll backers that formerly were used to distribute information are now online.
- Board staff worked diligently on getting accurate lists of those who are certified and eligible to vote.
- Director Shea-Reid addressed the HR Directors about the election at their forum.
- Redoing the election is a good call; she would like standing authorization for an all-employee email blast.
- She sent an emphatic email to Higher Education HR Directors because their employees are not reached through the all-employee email blast. She requested that they copy her on their announcement of the second Board Election.

Ms. Yerger expressed her thanks to staff for their time devoted to the election process. Director Shea-Reid also distributed a copy of the chronology of the process regarding the issue of timeliness of how it was carried out. After Mr. Lucero stated that the Board needed to give the Director guidance on any response to Mr. Santo's letter, it was decided that Director Shea-Reid would write a letter in response to questions raised in the letter.

- Move to 1525 Sherman Street

Director Shea-Reid stated that the move to 1525 will be in November, but the Board meeting room had not yet been determined.

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

Guy Santo addressed the Board as a candidate for the Board, commending the members for their work, stating that elected members must promote and protect the rights of public servants, and declaring that until another elected member is seated, the Board is operating at 20% below its full capacity.

Mr. Peck thanked Mr. Santo for addressing the Board and stated that it is unintentional that the Board is short one member and is doing all that can be done to insure efficient and fair consideration of all cases.

X. PROPOSED LEGISLATION AND/OR RULEMAKING

XI. EXECUTIVE SESSION

- A. Executive Session Minutes of July 16, 2013.

The Board declined to enter into Executive Session and tabled the July 16, 2013 Executive Session Minutes until the September 20, 2013 meeting.

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The Board meeting ended by consensus at 11:15 A.M.

DATED THIS 20th DAY OF AUGUST, 2013.

Garth Lucero, Acting Board Chair

Neil Peck, Member

Teresa Salerno, Member

Sally Yerger, Member