

State of Colorado



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Meeting Minutes September 17, 2013

The State Personnel Board met in public session on Tuesday, September 17, 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 9:07 a.m. Board Members Vonda Hall, Garth Lucero, Neil Peck, and Sally Yerger were present in person. Board Member Teresa Salerno was delayed.

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

INTRODUCTION OF NEWLY ELECTED BOARD MEMBER

Director Dana Shea-Reid began the meeting by introducing newly elected Board Member Vonda Hall and providing a brief biography of Ms. Hall.

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

On behalf of Director Kathy Nesbitt and State Chief HR Officer Deborah Layton-Root, Ken Johnson, Director of Consulting Services, Training and Development, reported to the Board regarding the status of initiatives and activities in DPA and DHR, as follows:

- The Office of State Planning and Budgeting (OSPB) is incorporating Director Nesbitt's recommendations for the Total Compensation Report. The Governor's response to the report will be issued on November 1, 2013.
- The Division of Human Resources (DHR) will be moving to 1525 Sherman Street the week of October 25, 2013, followed by DPA's Executive Director's Office, other divisions of DPA and the State Personnel Board on November 8.
- A statewide Employee Engagement survey, which is done every two years, will be conducted by Org Vitality, the same group that conducted the 2011

survey. Org Vitality was ranked #1 in the RFP recently conducted. Employees are scheduled to receive the survey on November 5 and the survey will close November 25. A report on the results of the survey is scheduled to be published by December 16, 2013.

- DPA has initiated rulemaking and will file the proposed changes to Director's procedures on September 27. The public hearing will be November 4, 2013, at the Department of Transportation. The effective date of the new rules will be January 1, 2014.
- In partnership with COWins, DHR is conducting a bid process for benefits plans that is anticipated to be a 22 month process with an anticipated effective date of July 1, 2015.
- As follow up to the Affordable Health Care Act, DHR is looking into insurance exchanges.

ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2013 – 2014

Acting Board Chair Lucero explained that with the presence of newly elected Board member, Ms. Hall, there was now a full Board and the election of Board officers would proceed. The Board agreed at the last meeting to carry over the election to the September meeting so that a full Board could participate in the election of Board officers.

Mr. Peck moved and nominated Mr. Lucero for Chair of the Board for Fiscal Year 2013-2014. Ms. Hall seconded the motion. The nominations for Board Chair were closed by consensus.

Ms. Salerno moved and nominated Ms. Yerger for Vice-Chair of the Board for Fiscal Year 2013-2014. Mr. Peck seconded the motion. The nominations for Board Vice-Chair were closed by consensus. The nominations of Mr. Lucero as Board Chair and Ms. Yerger as Board Vice-Chair each passed unanimously.

II. PENDING MATTERS

- 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.

EXECUTIVE SESSION

- A. Executive Session 1

At 9:26 A.M., Mr. Lucero made a motion to enter into Executive Session for the purpose of receiving legal advice on specific legal questions, pursuant to § 24-6-402(3)(a)(II), C.R.S., including conflicts of interest and questions regarding recusal from Mr. Peck. The motion was seconded by

Ms. Yerger. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger. Executive Session ended by consensus at 9:36 A.M.

Open Session:

Mr. Peck recused himself from participation in the discussion and voting in this case and left the meeting room.

Ms. Salerno moved to deny the Petition for Declaratory Order. Ms. Yerger seconded the motion. Ms. Hall offered a friendly amendment to the motion, adding that the petition was being denied on the grounds that the Board lacked jurisdiction to consider it. The friendly amendment was adopted and added to the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Ms. Salerno and Ms. Yerger.

Mr. Peck returned to the meeting room after the voting had concluded.

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

Ms. Hall recused herself from participation in the discussion and voting in this case and left the meeting room.

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

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

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

Ms. Yerger moved to adopt the Preliminary Recommendation of the Administrative Law Judge and grant Complainant's petition for hearing on Complainant's claims of Colorado Anti-Discrimination Act retaliation and State Employee Protection Act (Whistleblower Act) violation. Mr. Peck seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno, and Ms. Yerger.

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

- A. Brett Williams v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2011G028, Order Awarding Back Pay and Front Pay (August 16, 2013; Amended August 29, 2013).
- B. Karine Chosvig v. Department of Revenue, Division of Motor Vehicles, State Personnel Board case number 2013B026 (August 16, 2013).
- C. Timothy J. Larsen v. Department of Agriculture, Markets Division, State Personnel Board case number 2013B120 (August 29, 2013).

Director Shea-Reid reported that in both the Williams and Chosvig cases, appeals and cross-appeals had been filed, but there has been no appeal filed in the Larsen matter.

VI. REVIEW OF THE MINUTES FROM THE AUGUST 20, 2013 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD

Ms. Yerger moved to approve the Minutes of the August 20, 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. Ms. Hall abstained from voting because she was not present at the August 20, 2013 Board Meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS AUGUST 20, 2013 PUBLIC MEETING:

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

The Board voted to deny Respondent's Request for Oral Argument and to adopt the findings of fact and conclusions of law in the Order Granting Complainant's Motion for Summary Judgment.

- B. Jill Gunderson v. Department of Human Services, Office of Enterprise Partnerships, State Personnel Board case number 2013G073.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and to deny the petition for hearing. Complainant shall have ten days from issuance of this decision to grieve Respondent's rescission of flex time.

- C. Mark E. Southerland v. Department of Human Services, Division of Youth Corrections, Spring Creek Youth Services Center, State Personnel Board case number 2013S013.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge, to deny the petition for hearing, and to refer the matter to the State Personnel Director for further action as appropriate.

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

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

- Case Status Report
- Cases on Appeal to the Board and to Appellate Courts
- Mandate: Order Reversed, Noma Miller v. Department of Public Safety, State Personnel Board case number 2009G085, Court of Appeals No. 2011CA918 (Issued December 5, 2012; Received by the Board August 8, 2013)
- Mandate: Appeal Dismissed, John Schutte v. Department of Corrections, State Personnel Board case number 2010G082, Court of Appeals No. 2012CA1413

In addition to these matters, Board Counsel Faley stated that the Court of Appeals had affirmed the Board Order in an unpublished opinion in Brown v. CSU on August 2, 2013.

B. OTHER BOARD BUSINESS

- Revised Conflict of Interest Policy and Conflict of Interest Training Following Board Meeting

Director Shea-Reid presented the revised Conflict of Interest Policy to the Board which included changes recommended by the Board at the last meeting and noted that the policy is consistent with similar policies used by other boards, and is a matter of best practice. Consistent with the new policy, Board members and staff will sign an annual conflict of interest disclosure and, as needed, a monthly disclosure form for any conflicts or appearances of conflict with current Board business. Mr. Peck made a motion to ratify the revised State Personnel Board Conflict of Interest Policy. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno and Ms. Yerger. Board members each signed the new Conflicts of Interest Policy to acknowledge they understand and will comply with the policy.

Director Shea-Reid reminded the Board that a scheduled training session in ethics would take place after the conclusion of the Board meeting.

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

X. PROPOSED LEGISLATION AND/OR RULEMAKING

- Rulemaking initiated by DPA recommends Board Rules 4-27 and 4-32 be amended

Director Shea-Reid distributed a spreadsheet with all of DPA's recommended changes including changes to Board Rules 4-27 and 4-32. The proposed changes were the result of input from Consulting Services and the HR community statewide, and were discussed and recommended by the rulemaking committee of stakeholders, including Ms. Shea-Reid. The Board discussed the proposed changes to the Board Rules and the rationale behind the changes. Director Shea-Reid said the changes were reasonable and intended to make the Board Rules consistent with Director's procedures that have been amended to reflect statutory changes from Amendment "S." Mr. Lucero explained that DPA is undertaking a full rulemaking of its Director's procedures and that the potential for confusion or inconsistency could arise if the Board does not change its rules to correspond with DPA's procedures. Board Counsel Faley stated that if the Board wants to participate in the rulemaking, it

could do so or continue to delegate the Director to represent them. Ms. Yerger stated that the Director has represented the Board in all prior rulemaking processes. Mr. Peck moved to delegate Director Shea-Reid the authority to continue work in the rulemaking. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno and Ms. Yerger.

Mr. Lucero remarked that there was little substantive change proposed with regards to the two Board rules; Mr. Peck and Ms. Salerno asked about the rationale behind the changes and if the Board was required to participate in a joint rulemaking. Board Counsel Faley advised the members that the Board could have its own rulemaking or participate in a joint rulemaking with DPA. The Director said it was more effective to do joint rulemaking with DPA as the Board has in the past. She added that in consideration of the January 1, 2014 effective date of the rulemaking, the Board and DPA must follow a strict timeline as established by the Secretary of State's Office. The Director stated that she would speak to stakeholders and get any additional background that could further explain the rationale for the proposed changes to the Board Rules 4-27 and 4-32, and reminded the Board that adoption of the rules would only occur after the rulemaking hearing, and only if the Board agreed with the proposed changes. Director Shea-Reid also noted that if there were any other Board Rules that the Board would like to amend at this time, it could take the opportunity include those rules in this joint rulemaking process.

Board Counsel Faley suggested that there be a motion from the Board to participate in the joint rulemaking with DPA. Mr. Peck moved to participate in joint rulemaking. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno and Ms. Yerger.

Mark Schwane, General Counsel for COWins asked to be recognized and made a recommendation that the Board also consider an additional rule change for Board Rule 8-59. Mr. Schwane suggested that the Board add a provision giving attorneys the authority to issue subpoenas, consistent with C.R.C.P. 45. Mr. Peck noted that this is a common authority for attorneys and moved to delegate Director Shea-Reid to develop proposed language to amend Board Rule 8-59 allowing attorneys to issue subpoenas and to include it with the proposed rulemaking. Ms. Salerno seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno and Ms. Yerger.

XI. EXECUTIVE SESSION

B. Executive Session 2 – Consideration of the Minutes of July 16, 2013.

At 11:21 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 July 16, 2013. The motion was seconded by Ms. Yerger. The motion passed on the affirmative vote of the following Board members: Ms. Hall, Mr. Lucero, Mr. Peck, Ms. Salerno and Ms. Yerger. Executive Session ended by consensus at 11:31 A.M.

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The Board meeting ended by consensus at 11:32 A.M.

DATED THIS 19th DAY OF NOVEMBER, 2013.

Garth Lucero, Board Chair

Vonda Hall, Member

Neil Peck, Member

Teresa Salerno, Member

Sally Yerger, Member