

MINUTES

**STATE PERSONNEL COMMISSION MEETING
STATE PERSONNEL DEVELOPMENT CENTER
101 WEST PEACE STREET
RALEIGH, NORTH CAROLINA**

February 17, 2011

The State Personnel Commission (SPC) met on February 17, 2011. Chairman Alvin G. Ragland called the meeting to order. Members present were Chairman Alvin G. Ragland, Commissioner Susan Bailey, Commissioner George I. Allison, Commissioner Wayne Peedin, Commissioner Virgie DeVane-Hayes, Commissioner Morris Lee Rascoe, Commissioner Thomas Stern and Commissioner Lisa Grafstein. Pursuant to North Carolina General Statutes §138A, the North Carolina Ethics Act, Chairman Ragland asked all Commissioners if there were any conflicts of interest with respect to any matters coming before the Commission.

Next on the agenda was the oral argument component of the docket. The following cases were scheduled and heard for oral argument:

1. **Melissa M. Reed v. Cumberland County Department of Social Services,**
10 OSP 1090
Attorney for the Petitioner Ms. Vanessa K. Lucas
Attorney for the Respondent Ms. Phyllis P. Jones
2. **Camela O. Warren v. North Carolina A&T State University,**
09 OSP 4811
Attorney for the Petitioner Ms. Nancy P. Quinn
Attorney for the Respondent Ms. Kathy A. Murphy

Status of the Following Oral Argument Case

1. **Phyllis Whitaker v. North Carolina State Board of Elections - Continued until the**
April 21, 2011 State Personnel Commission Meeting

Next on the agenda was the business session. Chairman Ragland asked if anyone signed up for the Public Hearing. No one signed up for the Public Hearing.

The first item on the business agenda was the approval of the minutes from the December 9, 2010 State Personnel Commission meeting. There being no corrections, the minutes were approved as circulated. [See Attachment]

State Personnel Director's Report

The next item on the agenda was the State Personnel Director's Report.

State Personnel Director Linda D. Coleman stated that the State Personnel Commission was very interested in the work of the Office of State Personnel as well as the contested cases that are heard. Director Coleman gave a brief report on the initiatives of the Office of State Personnel particularly in light of the budget. Director Coleman explained that the Governor would be holding a press conference at 10:00 a.m. after which the budget would be released. Director Coleman stated there was an anticipation of numerous reductions in force which would affect many state employees. The Office of State Personnel is attempting to be as proactive by forming a reduction in force team. The team's responsibilities are to see how the Office of State Personnel would meet the challenges of those who are affected by the reduction in force. Director Coleman encouraged everyone to visit the Office of State Personnel's website on reduction in force. The Office of State Personnel will conduct two webcasts on reduction in force beginning on March 16, 2011. The webcasts are primarily for agency human resources, perhaps recruitment and selection employees and benefit representatives who will be consulting with those who are being directly impacted by the reduction in force. In anticipation of the reduction in force, the Office of State Personnel is partnering with a number of state agencies and organizations. Some of the agencies and organizations will include the Employment Security Commission, the Department of Commerce, particularly their Workforce Development Division, the North Carolina Community College System, Wake Technical Community College, the State Employees' Credit Union, the State Employees Association, the State Treasurer's Office, particularly the 401K section, and a number of other people who have yet to be contacted. The Office of State Personnel will also work with the State Health Plan and wellness people because this will be added as a component of the reduction in force. There will be a transition office located on West Street, Raleigh, North Carolina. There will be an opportunity for employees to participate in workshops, have career counseling, resume preparation, with telephones and computers for their utilization. Director Coleman stated that she would keep the Commission abreast of other issues as they arise.

Ms. Pam Bowling, Human Resources Managing Partner, presented to the Commission, for consideration and approval, state classification and pay actions. Ms. Bowling stated that studies were performed and it was found that several classifications should be abolished because they were no longer needed and would not be needed in the near future. Also, Ms. Bowling stated that there were seven classifications that were being abolished in state agencies. Ms. Bowling requested that those classifications be transferred to local agencies for their use. Ms. Bowling recommended to the Commission that the listed classifications be abolished and that the seven classifications be transferred to the local agencies for their use. **[See Attachment]**

Chairman Ragland asked for the definition of abolishment as it related to the classifications. Ms. Bowling explained that the positions are inactivated and are no longer usable. Commissioner Allison asked if there were employees that would be impacted by this

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action. Ms. Bowling explained that employees would not be impacted by this action. Commissioner Peedin asked if this was a part of the career banding that started taking place. . . Ms. Bowling explained the process of reviewing the classifications. She stated that the positions were not abolished at that time because they needed time to transfer to the new titles before being abolished. Ms. Bowling stated that these positions could now be abolished because the new titles are currently being used. Commissioner Bailey made a motion to approve the state classification and pay actions. Commissioner Hayes seconded the motion. The Commission voted. The motion was made and carried.

Ms. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, revised Merit Based Recruitment and Selection Plans for the following agencies and Universities: North Carolina Department of Crime Control and Public Safety, North Carolina Board of Cosmetic Art Examiners, North Carolina State University, and the University of North Carolina at Wilmington. Ms. Floyd explained the revisions that were made to the plans. Ms. Floyd also stated that the staff of Office of State Personnel reviewed the revised plans and recommended that the Commission grant approval of the above-mentioned plans. **[See Attachment]**

Chairman Ragland asked if there were any questions. There being no questions, Chairman Ragland asked for a motion to approve the revised Merit Based Recruitment and Selection Plans. Commissioner Bailey made a motion to approve the revised plans. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Director Coleman presented an exception for the following reduction in force rules and state policy: (1) 25 NCAC 1H.0904 and (2) 25 NCAC 1H.1003. Notwithstanding the language of 25 NCAC 1H.0904, 25 NCAC 1H.1003 and related state policy, an eligible employee reduced in force or separated from a position designated exempt via NCGS §126(d) is not required to submit an application for employment to the employee's agency in order to be afforded priority reemployment consideration and the agency is not required to submit an application to the Office of State Personnel. This exception allows individuals who possess priority reemployment consideration referenced in the North Carolina Administrative Code and policy, cited above, an expedient process for applying for vacant positions within state government in a manner which enables agencies and universities to quickly be made aware of the individual's priority. Director Coleman explained that she was bringing this before the Commission for informational purposes. Chairman Ragland asked if the employee could apply for a similar or a higher position or. . . Director Coleman explained that the employees do not have priority reemployment consideration for a higher level position. If they accept a position at a lower grade level, their priority continues until they can perhaps reach that grade level from which they were reduced. Chairman Ragland asked if the salary changed or if it stayed the same, if an employee took a position at a lower salary grade from the position that they were reduced. Director Coleman stated that the Office of State Personnel encourages the salary to stay the same as the employee was reduced.

However, some agencies may not have the money to do that and the employee may accept the salary at the lower salary range. The employee will then continue to have priority until they can get a position with the salary that they were reduced. Commissioner Ragland asked if that would impact the employee's pension. Director Coleman stated that it would because your pension is based on a couple of things. However, it's the annual final compensation, which means it's the four highest paid years and generally that's the last four years of your employment.

Next, Ms. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, the following proposed rules in Title 25 of the North Carolina Administrative Code to begin the rulemaking process: **Reduction in Force Rules; 25 NCAC 1H.0904 – Agency and Employee Responsibilities, 25 NCAC 1H.0905 – Office of State Personnel Responsibilities; 25 NCAC 1H.1004 – Agency and Employee Responsibilities.** Ms. Floyd explained that the current rule requires that an employee formally notified of reduction in force shall file a completed state application with the employee's agency within 30 days of written notification of separation. Subsequently, the agency forwards the application to the Office of State Personnel. The rules also articulate specific reduction in force related tasks provided by the Office of State Personnel. Ms. Floyd stated that the Office of State Personnel was proposing to amend the rules to remove the requirement of completing and forwarding a completed state application to the Office of State Personnel. In addition, the Office of State Personnel proposed to remove the specificity of reduction in force related tasks which would allow the Office of the State Personnel the ability to respond to changing needs of affected reduction in force employees. Ms. Floyd recommended that the Commission approve the above-mentioned rules to begin the rulemaking process. **[See Attachment]**

Chairman Ragland asked if there were any questions. Commissioner Stern stated that he sensed that with employees losing their jobs they would be able to get assistance from the Office of State Personnel. Commissioner Stern questioned if this would still be true with this particular rule amendment. Ms. Floyd stated that reduction in force employees would still be able to get assistance from the Office of State Personnel. Commissioner Stern stated that, "Viewing this in a legal sense the rule amendment seems to be referring employees to a website and saying that this is information and that we're not going to provide you services any more". Commissioner Stern stated that his concern is that this change doesn't allow a severe reduction of services to displaced employees and it's doing that at a time when employees are going to need assistance more than ever. Ms. Floyd stated that the change was to allow the Office of State Personnel to be more flexible. Ms. Floyd also stated that the Employment Security Commission's primary focus is to help people that are without jobs. Ms. Floyd stated that while the Office of State Personnel is providing assistance they are also attempting not to be duplicative of other state agencies. The Commission showed great concern about this proposed rule amendment. Commissioner Stern stated that he was very supportive of what the practice is today. Ms. Floyd stated that there was also consideration, with budget restrictions, as to what the staff at the Office of State Personnel would be able to do successfully and proactively. Commissioner Stern

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requested information, starting back to the years 2009, 2010 and 2011 on the number of employees that had been reduced in force, how many employees requested these services and what kind of services were provided and has the Office of State Personnel been providing the services. Commissioner Stern wanted to know how our services relate to the Employment Security Commission. Ms. Floyd stated that the Office of State Personnel does have that information and will be glad to provide it to the Commission. Chairman Ragland stated that he had similar concerns. Chairman Ragland recommended that maybe the Commission needed to proceed with (a) of the rule, and maybe with (b), give it some more time to be thought through. Commissioner Grafstein stated that the Commission has a role to play in reviewing policy, but that the staff at the Office of State Personnel that are doing the work are in the position to understand the limitations and resources out there. Commissioner Grafstein stated that she commended the staff for what they are doing. Commissioner Peedin wanted to know if the proposed change would put exempt employees and employees that are subject to the State Personnel Act in the same category. Ms. Floyd explained that rules 25 NCAC 1H.0904 and .0905 pertained to employees that were subject to the State Personnel Act and 1H.1003 and .1004 pertained to employees that were in exempt positions. Mr. Lars Nance, Counsel to the Commission stated that he felt that the Office of State Personnel was attempting to add to their services by having the webcasts and having a website for employees to visit. Mr. Nance stated that he did not feel as if the Office of State Personnel was trying to abandon anybody. Director Coleman stated that some of the services have changed and some have not, i.e. the referral list is no longer being kept by the Office of State Personnel. The referral list is being kept somewhere else. Commissioner Bailey stated that the Employment Security Commission's mission is to assist those who have been displaced for whatever reasons. The Employment Security Commission does have experts who assist customers with resume preparation and job seeking skills workshops. Commissioner Bailey stated that the Employment Security Commission partners with the Community College System very closely to fast track people into the jobs targeted by the community college. The Employment Security Commission also has a call center to assist the individuals who have concerns. They also have 50+ offices throughout the state to assist those individuals, as well as individuals who are not comfortable with using computers. Director Coleman stated that the Office of State Personnel is continuing to meet as a reduction in force team and that she has some more contacts to make with regards to partnerships. Director Coleman stated that she wanted to get all of the partnerships together to determine what services each partner would provide. Director Coleman recommended that the Commission not take an action on (b) until the Office of State Personnel could get further information to the Commission so that the Commission would feel comfortable in promulgating that particular part of the rule.

Chairman Ragland made a motion to proceed with the rulemaking with the exception of (b) which would come back to the Commission at its next meeting to review. Ms. Floyd asked if that exception would cover rules .0905 (b) and the companion rule .1004 (b). Chairman Ragland stated that was correct. Commissioner Stern seconded the motion. The Commission voted. The motion was carried.

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Next, Ms. Charlene Shabazz, Human Resources Partner, presented to the Commission, for consideration and approval, Rule 25 NCAC 1N.0602 Policy, to begin the rulemaking process. Ms. Shabazz explained that the rule was proposed to be amended in order to ensure that adoptive mothers, who can and do express milk to nurse their babies, receive the same benefits afforded birth mothers under the lactation support policy. Ms. Shabazz recommended that the Commission approve the proposed rule amendment to begin the rulemaking process.

Chairman Ragland asked if there were any questions. Commissioner Peedin made a motion to approve the proposed amendment to the rule in order to begin the rulemaking process. Commissioner Allison seconded the motion. The Commission voted. The motion was made and carried.

Next, Mr. Ken Litowsky, Human Resources Partner, presented to the Commission, for consideration and approval, employee grievance policies and procedures for the following agencies and universities: **North Carolina Department of Administration, North Carolina Department of Commerce, North Carolina Department of Correction, North Carolina Department of Transportation, Employment Security Commission, Office of the State Auditor, North Carolina Wildlife Resources Commission, North Carolina Office of the Commissioner of Banks, State Board of Elections, North Carolina Agricultural and Technical State University, Fayetteville State University, North Carolina Central University, North Carolina School of Science & Mathematics, North Carolina State University, University of North Carolina – Asheville, University of North Carolina – Greensboro, University of North Carolina – Pembroke, University of North Carolina – Wilmington, Western Carolina University, and Winston-Salem State University.** Mr. Litowsky explained that the Employee Relations staff had reviewed the employee grievance and policy procedures and found that they were in compliance with North Carolina General Statutes §126-34.1 and sections 1 and 7 of the State Personnel Manual. Staff recommended approval of the employee grievance and policy procedures. **[See Attachment]**

Chairman Ragland asked if there were any questions. Commissioner Bailey asked that the Commission vote on the Employment Security Commission's procedures separately. Commissioner Peedin asked that the Commission vote on the Department of Administration's procedures separately. Commissioner Peedin stated that he would make a motion to vote on all of the employee grievance procedures with the exception of the Employment Security Commission and the Department of Administration. Commissioner Allison seconded the motion. The Commission voted. The motion was made and carried.

Next, Commissioner Grafstein made a motion to approve the Employment Security Commission's employee grievance procedures. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried. Commissioner Bailey recused herself from this vote.

Next, Commissioner Grafstein made a motion to approve the Department of Administration's employee grievance procedures. Commissioner Hayes seconded the motion. The Commission voted. The motion was made and carried. Commissioner Peedin recused himself from this vote.

Secondly, Mr. Litowsky informed the Commission that there were three boards and commissions that had not submitted their policies for review at all and that one policy had been reviewed but the agency had not yet submitted their revisions. Mr. Litowsky stated that they were not in compliance. Mr. Litowsky asked the Commission to consider a motion to require those boards and commissions to use an employee grievance policy written by the Office of State Personnel until they submitted updated policies for the Commission's review and approval. Chairman Ragland asked which boards and commissions had not submitted their policies. Mr. Litowsky said that the State Board of Barber Examiners, Cosmetic Arts, and the Board of Opticians. Mr. Litowsky stated that the State Ethics Commission had one that was very close to being ready, but they had not submitted their revisions yet. Chairman Ragland asked if they were out of compliance now. Mr. Litowsky stated that this meeting was the last opportunity for the State Ethics Commission to be considered for compliance. After this meeting, they would be out of compliance.

Chairman Ragland asked if there were any questions. There being no questions. Chairman Peedin asked for a motion to approve Mr. Litowsky's motion that the Office of State Personnel's grievance procedures and policy be used until such time as the policies of the above-named boards and commissions were submitted to the Commission for consideration. Commissioner Allison seconded the motion contingent upon adding the word "approval". The Commission voted. The motion was made and carried.

The Commission adjourned and went into Executive Session to consider the oral argument cases and cases in which the parties waived oral argument.

Executive Session

1. **Vincent Jerome Horton v. North Carolina Central University, 10 OSP 1168**
2. **Andria Lambert v. North Carolina Department of Correction, 09 OSP 5551**
3. **Anthony P. Moore v. North Carolina Department of Transportation, 10 OSP 0930**
4. **Alanda A. Vance v. Beth Wood, Office of the State Auditor, 09 OSP 3649**
5. **Kathleen Kincinski v. North Carolina A & T State University, 09 OSP 3923**