

MINUTES

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

June 17, 2010

The State Personnel Commission (SPC) met on June 17, 2010. Madam Chair Robin Adams Anderson called the meeting to order. Members present were Madam Chair Robin Adams Anderson, Commissioner Susan Bailey, Commissioner K. Dean Shatley, II, Commissioner Axel Lluch, Commissioner Wayne Peedin, Commissioner Alvin G. Ragland, Commissioner Virgie DeVane-Hayes, Commissioner Morris Lee Rascoe and Commissioner Wayne Peedin.

Madam Chair Anderson called the meeting to order. Madam Chair Robin Adams Anderson and Commissioner K. Dean Shatley, II were presented with letters of appreciation and plaques by the State Personnel Director Linda D. Coleman for their excellent service to the state of North Carolina and the State Personnel Commission. Chair Anderson and Commissioner Shatley expressed that it had been an honor and privilege to serve on the State Personnel Commission. Commissioner George I. Allison's term also expired. Commissioner Allison was unable to attend the meeting.

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

1. **Haresh Motiroam Advani v. East Carolina University, Division of Finance and Administration, (Facilities Services)** **Tab 1**
Attorney for the Petitioner Ms. Mary-Ann Leon
Attorney for the Respondent Mr. John P. Scherer, II
2. **Wade Bryan Bulloch v. North Carolina Department of Crime Control and Public Safety, North Carolina Highway Patrol** **Tab 2**
Attorney for the Petitioner Mr. J. Michael McGuinness
Attorney for the Respondent Ms. Tamara Zmuda
3. **Elsie Hinton v. North Carolina Department of Transportation** **Tab 3**
Appearing Pro Se Ms. Elsie Hinton
Attorney for the Respondent Ms. Allison A. Angell
4. **Lorraine Smith v. North Carolina Department of Environment and Natural Resources** **Tab 4**
Attorney for the Petitioner Mr. J. David James
Attorney for the Respondent Mr. Francis W. Crawley

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Next on the agenda was the business session. Chair Anderson 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 for the April 15, 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.

Next, Ms. Pam Bowling, Human Resources Managing Partner, presented to the Commission, for consideration and approval, state classification and pay actions. The Office of State Personnel (OSP) and the Department of Justice conducted a classification and compensation study of the State Bureau of Investigation (SBI) Crime Laboratory which was approved by the State Personnel Commission in February, 2010 and implemented effective April, 2010. As a result of the study, positions in Chemist, Forensic Document Analyst, Forensic Firearm Analyst, Forensic Molecular Geneticist, and Forensic Impressions Analyst class series were transitioned to a new Forensic Scientist class (including Supervisor and Manager levels). A study of the SBI Assistant Director of the Crime Laboratory was requested to be completed after the conclusion of the Forensic Scientist study. This action implements the study of the SBI Assistant Director of the Crime Laboratory class which will bring it in line with levels borne out of the Forensic Scientist study as well as comparable Assistant Director levels within the SBI. The current salary grade is 80 and the proposed salary grade is 82. Ms. Bowling asked that the Commission approve the proposed action with an effective date of June 1, 2010. Commissioner Ragland asked if the action was just changing the range and not the pay. Ms. Bowling stated that it was just changing the grade and not the pay. **[See Attachment]**

Chair Anderson asked if there were any other questions. There being no other questions, Chair Anderson asked for a motion and second to approve the state classification and pay action as presented by Ms. Bowling. Commissioner Ragland made a motion to approve the state classification and pay actions. Commissioner Lluch seconded the motion. The Commission voted. The motion was made and carried.

Next, Mr. Keita Cannon, Human Resources Partner, presented to the Commission, for consideration and approval, salary adjustment revisions for Local Management Entity (LME) Directors. In 2008, the Office of State Personnel was asked to establish an across the state salary range for the LME Directors. A request was recently made for Office of State Personnel to review the established salary range of the LME Directors for a proposed update. To be consistent, the same sources and method was used to determine the range. The analysis was prepared by Ms. Vira Hogan, Human Resources Partner, in the Classification and Compensation

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Section of the Office of State Personnel. Mr. Cannon stated that the current salary range only represents a ten percent above what the range was in 2008. No changes were made in 2009. Currently there are no directors at the maximum salary level. Mr. Cannon asked that the Commission approve the proposed LME salary range with an effective date of July 1, 2010

Chair Anderson asked for a motion and second to approve the salary adjustment revisions for Local Management Entity Directors, as presented by Mr. Cannon, with an effective date of July 1, 2010. Commissioner Bailey made a motion to approve the salary adjustment revisions for the Local Management Entity Directors. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, the Revised Merit-Based Recruitment and Selections Plans for the North Carolina Department of Public Instruction and the Office of State Personnel. Ms. Floyd discussed each plan revision.

Ms. Floyd stated that the proposed plan for the North Carolina Department of Public Instruction met the State policy requirements. Major revisions to the plan encompass incorporating the department's automated application system, incorporating the statutory changes to the Veterans Preference priority and streamlining terminology.

Ms. Floyd stated that the proposed plan for the Office of State Personnel met the State policy requirements. Major revisions to the plan include incorporating the statutory changes to Veterans Preference priority, streamlining terminology and updating internal processes and procedures.

Ms. Floyd explained that staff at the OSP had reviewed the proposed plans and asked that the Commission grant approval for each plan with an effective date of July 1, 2010. **[See Attachment]**

Chair Anderson asked for a motion and second to approve the revised Merit-Based Recruitment and Selection Plan for both the North Carolina Department of Public Instruction and the Office of State Personnel, as presented by Ms. Floyd, with an effective date of July 1, 2010. Commissioner Peedin made a motion to approve the revised Merit-Based Recruitment and Selection Plans. Commissioner Ragland seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Delores Joyner, Rulemaking Coordinator, presented to the Commission, for consideration and approval, the Hearing Officer's Report on the following rules regarding community service leave and recruitment: **Rules 25 NCAC 1E.1601 Purpose; 1E.1602 Definitions; 1E.1604 Uses of Community Service Leave and 1H.0632 Applicant**

Information and Application. Ms. Joyner explained that the Commission had approved the above-mentioned rules to begin the rulemaking process at its February 18, 2010 meeting. The rules were previously noticed in the North Carolina Register and a public hearing was held. Ms. Peggy Oliver, Human Resources Policy Administrator was the Hearing Officer for these rules. However, due to Ms. Oliver's absence, Ms. Joyner presented the Hearing Officer's Report. Ms. Joyner asked that the Commission approve the Hearing Officer's Report so that the rules could be forwarded to the Administrative Rules Review Commission for approval. **[See Attachment]**

Chair Anderson asked if there were any questions. Commissioner Ragland asked if the rules were effective once the Commission approved them. It was explained that once the Commission approved the Hearing Officer's Report, the rules would be forwarded to the Administrative Rules Review Commission for consideration and approval. Once approved by the Administrative Rules Review Commission, the rules would become effective. Chair Anderson asked for a motion and second to approve the Hearing Officer's Report as presented by Ms. Joyner. Commissioner Ragland made a motion to approve the Hearing Officer's Report. Commissioner DeVane-Hayes 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, the following proposed rule amendments in Title 25 of the North Carolina Administrative Code: **25 NCAC 1J.0614 Definitions** and **1J.0615 Special Provisions** to begin the rulemaking process. Mr. Litowsky explained that the proposed amendments were being made to delete outdated portions of the disciplinary policy involved in the 1995 changes to the policy. Extensions of disciplinary actions were permitted to provide a smooth changeover from a system with no time limits on disciplinary actions to a system with an 18 month time limit. This we are well beyond the 18 months past 1995, this provision is no longer needed and is occasionally confusing. Mr. Litowsky asked the Commission to approve the rules to begin the rulemaking process. **[See Attachment]**

Next, Chair Anderson asked for a motion and second to adopt the disciplinary rules to begin the rulemaking process as presented by Mr. Litowsky. Commissioner Bailey made a motion to adopt the rules. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Pam Bowling, Human Resources Managing Partner, presented to the Commission for consideration and approval, the following proposed rules in Title 25 of the North Carolina Administrative Code: **25 NCAC 1E.1801 Policy, 1E.1802 Definitions, 1E.1803 Recruitment Documentation, 1E.1804 Eligibility Requirements, 1E.1805 Amount of Leave, 1E.1806 Relationship to Other Leave, 1E.1807 Carry-Over and Payment of Leave, 1E.1808 Transfer, 1E.1809 Use of Leave** to begin the rulemaking process. Ms. Bowling explained that incentive leave was being proposed in response to agencies' difficulty in recruiting mid or late

career applicants to positions that have been identified as critical to the agency's mission and for which the agency has documented recruitment difficulty attracting qualified applicants, or in recruiting for executive level or middle management positions. The proposed rules will allow agency management the flexibility to ward a one-time accrual up to 20 days (160 hours) of incentive leave to an eligible new employee upon hire. Incentive leave shall be maintained in a separate account from other accrued leave and can only be used as paid leave; therefore, the leave cannot be cashed out and will not be paid out upon separation if not used. Ms. Bowling asked that the Commission approve these rules to begin the rulemaking process. **[See Attachment]**

Chair Anderson asked for a motion and second to approve the incentive leave rules to begin the rulemaking process as presented by Ms. Bowling. Commissioner Peedin made a motion to approve the rules. Commissioner Ragland seconded the motion. The Commission voted. The motion was made and carried.

Next Ms. Bowling presented to the Commission for consideration and approval, Rule 25 NCAC 1E.0203 Vacation Leave Credits to begin the rulemaking process. The Office of State Personnel proposed that vacation leave accrual rates for state employees be increased in order to maintain competitiveness with other public and private employers. This proposal was made based on an analysis of vacation leave accrual practices of competitors. The proposal will combine the 0-2 years with 2 but less than 5 years to create a less than 5 years category. The proposal will also increase the annual accrual rate by 2 hours per year for each of the years of total state service category. Ms. Bowling recommended that the Commission approve the rule to begin the rulemaking process. **[See Attachment]**

Chair Anderson asked for a motion and second to adopt the rule regarding vacation leave credits, as presented by Ms. Bowling, to begin the rulemaking process. Commissioner Bailey made a motion to approve the rule. Commissioner Peedin seconded the motion. The Commission voted. The motion was made and carried.

Next, Mr. Dusty Wall, Human Resources Managing Partner, presented to the Commission for consideration and approval, **Rule 25 NCAC 1E.0103 Leave Offsetting**, to begin the rulemaking process. Leave offsetting was proposed in response to agencies' request for policy clarification on the practice of leave offsetting and to ensure consistent application of the policy throughout State government. Leave offsetting occurs when an employee works additional hours outside their normal schedule in a work week in which they also have scheduled or taken time off. The additional time worked offsets the time that the employee intended to cover with available leave. The number of leave hours originally charged must be reduced by the number of additional hours worked. Leave offsetting is mandatory. An employee cannot be paid for the leave and the additional time worked unless provided by policy. Leave offsetting applies to all types of leave except Holiday Leave, Civil Leave and Other Management

Approved Leave. Mr. Wall asked that the Commission approve the Leave Offsetting Rule to begin the rulemaking process. **[See Attachment]**

Chair Anderson asked for a motion and second to adopt the rule regarding leave offsetting, as presented by Mr. Wall, to begin the rulemaking process. Commissioner DeVane-Hayes made a motion to approve the rule. Commissioner Ragland seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Charlene Shabazz, Human Resources Partner, presented to the Commission, for consideration and approval. the following rules: **25 NCAC 1N.0601 Purpose, 1N.0602 Policy, 1N.0603 Office of State Personnel Responsibility, 1N.0604 Agency Responsibilities, 1N.0605 Employee Responsibility**, to begin the rulemaking process. The Lactation Support rules are proposed to be adopted in compliance with the Patient Protection and Affordable Care Act that amends the Fair Labor Standards Act by requiring employers to provide reasonable break time for lactation (expressing of milk) to employees subject to the act. Ms. Shabazz stated that the law came into effect March, 2010. Additionally the program will assist agencies in the development of work/life balance initiatives to support the wellness and health of employees of North Carolina State Government. Ms. Shabazz recommended the approval of these rules to begin the rulemaking process in order to be in compliance with the Fair Labor Standards Act. **[See Attachment]**

Next, Ms. Shabazz stated that because the Fair Labor Standards Act is already effective, the Office of State Personnel needed to provide guidance to agencies and universities as to how to implement the law. Therefore, Ms. Shabazz asked for approval of the Lactation Support Policy. Ms. Shabazz stated that prior to the federal law becoming effective in March, 2010, the Office of State Personnel worked with the North Carolina Child Fatality Taskforce to work on lactation support because of all of the research that has been conducted regarding the health benefit for both the child and the parent. When the child and parent are healthy, they are more productive at work and the state pays less money in health care benefits. The Office of State Personnel also wanted this to be a part of our overall work life initiative. **[See Attachment]**

Commissioner Ragland asked how it would be set up, i.e. would you need existing rooms. . . Ms. Shabazz explained the requirements of the law on providing to employees a room for lactation of milk. Commissioner Ragland also asked about the storage. Ms. Shabazz stated that the employee is responsible for the storage of the milk. Ms. Shabazz stated that once the policy and rules are approved, the Office of State Personnel will work with the Division of Public Health to provide information to employees and to its employers on how to implement the guidelines. Chair Anderson asked what the effective date would be for the policy. Ms. Shabazz stated that the effective date would be July 1, 2010.

Chair Anderson asked for a motion and second to approve the Lactation Support Policy with an effective date of July 1, 2010. Commissioner Ragland made a motion to approve the Lactation Support Policy. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Next Chair Anderson asked for a motion and second to adopt the lactation support rules as presented by Ms. Shabazz to begin the rulemaking process. Commissioner Ragland made a motion to adopt the lactation support rules. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Ms. Shabazz stated that Mr. Tom Vitaglione of the North Carolina Child Fatality Taskforce was present at the meeting. However, he had to leave to go back to the General Assembly. Mr. Vitaglione wanted to publicly thank the Commission for taking up the issue on lactation support.

Next, Ms. Ruth Barlow, Statewide Wellness Coordinator, presented to the Commission, for consideration and approval, proposed revisions to the Worksite Wellness Policy. Ms. Barlow stated that the annual review of the Office of State Personnel Wellness Policy had been completed. The proposed revisions are to edit and update parallel changes in other applicable policies, guidelines, and existing statutes. Ms. Barlow gave a brief summary of the proposed revisions. Ms. Barlow asked that the Commission approve the proposed revisions. [See **Attachment**]

Commissioner Ragland asked if the agencies were required to use this policy or could they have their own. Ms. Barlow stated that they generally use this policy as a foundation and then they may tweak it to fit their own agency.

Chair Anderson asked for a motion and second to approve the Worksite Wellness Policy revisions as presented by Ms. Barlow. Commissioner Bailey made a motion to approve the policy revisions. Commissioner Shatley seconded the motion. The Commission voted. The motion was made and carried.

Executive Session

1. **Spencer Batchelor v. North Carolina State University Campus Police** Tab 1
2. **Robert L. Hamm v. North Carolina Department of Correction** Tab 2
3. **Charolettee Hope v. Cumberland County Department of Social Services** Tab 3

4. **Dwight Steven Murphy v. North Carolina Department of Health and Human Services, Division of Services for the Blind** Tab 4
5. **Janet R. Reed v. Brunswick County Department of Social Services** Tab 5
6. **Steven Roman v. North Carolina Department of Correction, Division of Community Corrections** Tab 6

***Status of the Following Contested Cases**

Quintino Brooks v. North Carolina Central University

(Continued until the August 19, 2010 State Personnel Commission Meeting)

Willie Hubbs v. Broughton Hospital

(Continued until the August 19, 2010 State Personnel Commission Meeting)