

MINUTES

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

December 10, 2009

The State Personnel Commission (SPC) met on December 10, 2009. Madam Chair Robin Adams Anderson called the meeting to order. Members present were Madam Chair Robin Adams Anderson, Commissioner George I. Allison, Commissioner Axel Lluch, Commissioner Janie Harrell, Commissioner Susan Bailey, Commissioner Brenda Smith and Commissioner Wayne Peedin.

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

1. **Isaac T. Perkins v. North Carolina Department of Correction**
Attorney for the Petitioner Mr. Glenn A. Barfield
Attorney for the Respondent Ms. Catherine M. (Katie) Kayser
2. **Denise Vee v. Cumberland County Department of Public Health**
Attorney for the Petitioner Mr. Rick Wright
Attorney for the Respondent Ms. Phyllis P. Jones

Next on the agenda was the business session. Chair Anderson, on behalf of the Commission, gave recognition and appreciation to Commissioner Brenda Smith for her service on the State Personnel Commission. Commissioner Smith served on the Commission for four years in the capacity of a local government appointee. Chair Anderson also presented Commissioner Smith with a plaque. Commissioner Smith stated that she appreciated the opportunity to serve on the Commission. Commissioner Caroline Lee's term also expired. Commissioner Lee was unable to attend the meeting.

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 October 15, 2009 State Personnel Commission meeting. There being no corrections, the minutes were approved as circulated. **[See Attachment]**

Next on the agenda was the request for approval of the proposed 2010 State Personnel Commission meeting dates. Chair Anderson asked for a motion to approve the proposed 2010

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State Personnel Commission meeting dates. Commissioner Peedin made a motion to approve the proposed dates. Commissioner Allison seconded the motion. The motion was made and carried.

State Personnel Director's Report

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

Mr. Keita Cannon, Human Resources Partner, presented to the Commission for consideration and approval five local government salary plans for (2009-2010). Mr. Cannon asked that the Commission approve the plans. Chair Anderson asked for a motion and second to approve the local government salary plans. Commissioner Bailey made a motion to approve the plans. Commissioner Smith seconded the motion. The motion was made and carried. **[See Attachment]**

Next Mr. Cannon presented to the Commission for consideration and approval a substantial equivalency request from Randolph County. Mr. Cannon explained that he worked very closely with Mr. Kim Newsom, Human Resources Director for Randolph County, regarding this request. Mr. Drake Maynard, Director of Employee Relations and Mr. Cannon reviewed the request. Mr. Maynard and Mr. Cannon determined that Randolph County possessed the professional capacity to carry out the two functions for the portions of recruitment, selection advancement and classification, compensation. Mr. Cannon stated that Randolph County's system mirrors what is currently in place for all local government entities that are not substantially equivalent. The only difference is that Randolph County will now be filling the administrative and consultative roles if the Commission approves the request. Mr. Cannon recommended that the petition be approved with an effective date of January 1, 2010. **[See Attachment]**

Chair Anderson asked if Randolph County had received substantial equivalency status previously. Mr. Cannon said that they had not. Chair Anderson asked if there were any questions of the Commission. There were no questions. Chair Anderson asked for a motion and second to approve the petition for substantial equivalency status from Randolph County. Commissioner Allison made a motion to approve the petition. Commissioner Bailey seconded the motion. The motion was made and carried.

Next, Ms. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, continuous recruitment request for the Department of Public Instruction/Division of District and School Transformation. Ms. Floyd explained that NCGS §126-14.3 (Open and Fair Competition) requires closing dates for each job opening posted in a state agency or university unless an exception for critical classifications is approved by the State Personnel Commission. The Office of State Personnel received a request from the Department of Public Instruction for an exception to this requirement for educational classes within the Division of District and School Transformation. Ms. Floyd explained that the Department of

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Public Instruction has experienced challenges in the timely recruiting of educational staff within the Division of District and School Transformation. The work of the Division is key to Governor Beverly Perdue's education initiatives and focuses on resources to achieve mandates as outlined by the Courts through North Carolina Superior Court Judge Howard Manning. Ms. Floyd further explained that having these classes on continuous posting would enable the Department to respond swiftly when qualified candidates express interest. The Office of State Personnel staff reviewed the supporting information and agency rationale and the leadership recommends that the Commission approve the continuous recruitment request for the identified educational classes within the Division of District and School Transformation within the Department of Public Instruction with an effective date of December 10, 2009. Ms. Floyd stated that she would be glad to respond to any questions. **[See Attachment]**

Commissioner Peedin asked for a breakdown of what the division does. Ms. Floyd explained that the division is focused on working with the schools that have been identified in need or maybe even in crisis. Focus being to help develop their teachers in high school, middle school and elementary school. The teachers will then be better able to instruct the students so that they can increase test scores and their actual overall academic proficiency. Many of the schools are in low income areas where it is difficult to find teachers to live in those counties. Commissioner Peedin asked if the mentor programs that were already in the schools were included in this program. Ms. Floyd stated that in her discussions with the Department, the mentor programs were not articulated as being a part of this group. Chair Anderson asked if these classes had met all of the requirements for a continuous recruitment request. Ms. Floyd said that it did not. Chair Anderson asked for clarification as to which classes the continuous recruitment request pertained to. Ms. Floyd explained that it was just for the six classes in the Division of District and School Transformation in the Department of Public Instruction. Chair Anderson again asked if the classes had met all of the requirements. Ms. Floyd stated that they did not. Chair Anderson then referred to the State Personnel Director, Linda Coleman's memorandum stating that the request did not meet all of the established criteria according to the North Carolina Administrative Code. "However the North Carolina Administrative Code grants authority to the State Personnel Director to make exceptions and variances to the Administrative Code rules." Ms. Floyd stated that her understanding was that the statute, NCGS §126-14.3 says that the Commission approves classes for continuous posting. Otherwise, they would always require a closing date. The Administrative Code outlines the criteria that was established when the statute gave the Commission the authority to grant continuous posting. The criteria in the Administrative Code is criteria that the Office of State Personnel developed. Ms. Floyd further stated that according to the Administrative Code, the Director can provide that variance to the elements in the Code. Ms. Floyd stated that that is where the exception came. Ms. Floyd explained that the exception is not for the Commission to approve or not approve regarding the continuous posting. Chair Anderson wanted to know which criteria was not met. Ms. Floyd stated that the request did not meet the criteria of the high turnover rate. Ms. Floyd explained the reasons why the high turnover criteria were not met in this particular situation. Chair Anderson stated that she had problems with the State Personnel Director's exception. Commissioner

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Bailey stated that she wanted to express her appreciation and thanks to Director Coleman, Ms. Floyd and the team for going the extra mile to meet the needs of the students. Commissioner Bailey said that it is what needs to be done in order to help these students to become successful. Commissioner Bailey stated that it was her interpretation that the Director did not have to bring the information regarding the exception to the Commission and that she chose to. Chair Anderson stated that she would ask for a motion and second to approve the continuous recruitment request. Chair Anderson stated that after which there could be discussion about the motion. At that time, Chair Anderson stated that she would discuss whether or not she would support it. Mr. Lars Nance, Legal Counsel to the Commission, stated that the only issue before the Commission was the continuous recruitment request. Mr. Nance further stated that the Commission does not get an opportunity to say that the authority that is granted in the Administrative Code to Director Coleman, to say that, "I am waiving the provision of the Administrative Code." Mr. Nance explained that all the Director was doing was saying that it doesn't meet some of the criteria that normally was applied for continuous recruitment. Chair Peedin complimented Ms. Floyd on her composure. The State Personnel Director, Linda D. Coleman stated that she brought the memo to the Commission as a courtesy as well as for transparency. She stated that she did not want to do anything that was in conflict with the Commission's role or its ability to do the right thing. Ms. Coleman stated that education is very important to the State. It is important to the future of our children. It is also important to the Governor. Ms. Coleman stated that when the Department of Public Instruction came to the Office of State Personnel with the request, the Office of State Personnel treated this request as all requests are treated. They were put through the test to make sure that they met the criteria. Ms. Coleman stated that when it was brought to her attention that they did not meet the criteria, it was also brought to her attention that she had authority within the Administrative Code to grant an exception not only to variances but to grant the exception to the Code itself. Ms. Coleman stated that she granted the exception because she believed that what they were trying to achieve was an admirable goal. Ms. Coleman stated that in her determination and upon looking at what they were trying to achieve, she felt that it was reasonable to grant the exception. Ms. Coleman stated that she would always look at the situation in its totality before bringing a recommendation to the Commission for consideration and approval. Chair Anderson asked if the Office of State Personnel had already granted the continuous recruitment request in this matter. Ms. Floyd said the Office of State Personnel had not granted the request. Mr. Nance attempted to further explain the request to Chair Anderson.

Chair Anderson asked for a motion and second to approve the continuous recruitment request as presented by Ms. Floyd for the Department of Public Instruction, Division of District and School Transformation for the six classifications identified on the agenda to be effective December 10, 2010. Commissioner Peedin made the motion to approve the continuous recruitment request as stated by Chair Anderson. Commissioner Allison seconded the motion. The motion was made and carried.

Executive Session

1. **Kathleen Hardiman v. North Carolina Aquarium at Pine Knoll Shores, Jay Barnes, Director, James Lewis and Lonnie Burke**
2. **Kofi J. Jackson, Sr. v. North Carolina Department of Correction**
3. **Jerry Lewis Monroe v. Fayetteville State University**
4. **Darryll Williams v. North Carolina Department of Health and Human Services, Murdoch Developmental Center**