

**STATE HUMAN RESOURCES COMMISSION MEETING
LEARNING AND DEVELOPMENT CENTER, COMMISSION CONFERENCE ROOM
101 WEST PEACE STREET - RALEIGH, NORTH CAROLINA**

MEETING MINUTES – April 2, 2015

Members Present

Members present for executive session were Acting Chair Dan Barrett, Commissioner Martin Falls, Commissioner John Eller, Commissioner Virgie DeVane-Hayes, Commissioner Kelly Sizemore, and Commissioner Gloria Evans.

Other Attendees

Other attendees present were C. Neal Alexander, Jr., Director, Office of State Human Resources; Paula Woodhouse, Deputy Director, Office of State Human Resources; Anne Brown, General Counsel to the Commission; Valerie Bateman, General Counsel to Office of State Human Resources; Shari Howard, Rules and Policy Coordinator, Office of State Human Resources; LaShanda Langley, State Human Resources Commission Administrator, Office of State Human Resources; and Nancy Lipscomb, Director of Employee Relations and Local Government Services, Office of State Human Resources.

Opening

The State Human Resources Commission (SHRC) met on April 2, 2015. Pursuant to North Carolina General Statutes §138A and the North Carolina Ethics Act, Acting Chair Dan Barrett asked all Commissioners if there were any conflicts of interest or potential conflicts of interest with respect to any matters coming before the Commission. There were no conflicts of interest or potential conflicts of interest noted by any Commissioner. The Commission convened its open meeting at 9:05am in the Learning and Development Center Commission Conference Room.

Business Session

Approval of Agenda

Motion: Commissioner Falls made a motion to remove the oral argument section of the meeting due to the contested case being continued to the June 2015 Commission meeting.

Seconded: Commissioner DeVane-Hayes seconded the motion.

The motion carried and no other changes were made to the agenda.

CONSENT AGENDA ITEMS

- 1. Approval of Minutes for the February 5, 2015 State Human Resources Commission Meeting (Commission Action: Motion to Approve Minutes)**

Motion: Commissioner DeVane-Hayes made a motion to approve the consent agenda items.

Seconded: Commissioner Falls seconded the motion.

The motion carried.

Public Comment

No one signed up for Public Comment.

State Human Resources Director Report

Director Neal Alexander thanked the State Human Resources Commission for their dedication and service to the citizens of North Carolina. Director Alexander gave special recognition to Nellie Riley, Director, EEO, Diversity and Inclusion. Director Alexander stated Nellie Riley will be retiring effective June 1, 2015 and presented a commendation letter signed by the Acting Chair Dan Barrett. Director Alexander gave a brief update on the Appropriations Subcommittee for General Government which included updates on the OSHR Vision, NC GEAR recommendations, Applicant Tracking System, Reorganization through Reduction (RTR), Statewide Compensation System, Performance Management Program, and Learning Management Program. Director Alexander mentioned that the commissioner working sessions via phone with Shari Howard are continuing to be very productive.

Agency PM Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to amend the agency performance management policy. The policy sets forth requirements for the Statewide Performance Management System as authorized in G.S. 126. This policy provides a standardized approach to Performance Management including the establishment of a three point rating scale, a standard performance review cycle, a process to address performance planning, feedback and poor performance. In August, 2014, the State Human Resources Commission (SHRC) approved the adoption of a new Performance Management Policy to be effective July 1, 2015. The OSHR immediately began working with agencies to outline implementation strategies to ensure compliance with the July 1, 2015 effective date. As a result of implementation, areas were identified in the policy approved at the August meeting that need further clarification or further detail.

Motion: Commissioner DeVane-Hayes made a motion to amend the agency PM policy and associated rules.

Seconded: Commissioner Sizemore seconded the motion.

The motion carried.

University PM Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to adopt the new university performance management policy and revise the effective date to repeal the current university performance management policy until the new policy goes into effect. The new policy sets forth requirements for the University Performance Management System as authorized in G.S. 126 and H.B 834. This policy provides a standardized approach to Performance Management including the establishment of a three point rating scale, a standard performance review cycle, a process to address performance planning, feedback and poor performance. In August 2014, the State Human Resources Commission approved the adoption of a new Performance Management Policy to be effective July 1, 2015 for all State agencies. At that time, the University System requested approval to establish a separate policy that followed the same general provisions of the State agency policy but allowed a performance cycle to coincide with the academic year and allowed a different implementation training plan and

monitoring process since the universities are not utilizing the automated Performance Management system that is being used by the State agencies.

Motion: Commissioner Evans made a motion to adopt the new University Performance Management Policy.

Seconded: Commissioner DeVane-Hayes seconded the motion.

Motion: Commissioner DeVane-Hayes made a motion to revise the effective date to repeal the current university performance management policy until the new policy goes into effect.

Seconded: Commissioner Eller seconded the motion.

The motions carried.

Family Medical Leave Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to amend the new Family Medical Leave Policy. The policy sets forth standards for administering leave of absences in compliance with the Family Medical Leave Act of 1993 which was passed by Congress to provide all covered employees up to 12 weeks of unpaid leave for the birth of a child and to care for the newborn child, for the placement of a child with the employee for adoption or foster care; for the care of a child, spouse or parent who has a serious health condition; for the employee's own serious health condition. On February 25, 2015, the U.S. Department of Labor published a rule to update the definition of "spouse". Previously, the formal definition of spouse did not include same-sex spouses if the employee lived in a state that did not recognize the employee's same-sex marriage. This is a result of the U.S. Supreme Court's 2013 decision in *United States v. Windsor*, which found part of the Defense of Marriage Act unconstitutional. President Barack Obama instructed the DOL to review its regulations to apply the court's decision.

Motion: Commissioner Sizemore made a motion to amend the Family Medical Leave Policy.

Seconded: Commissioner DeVane-Hayes seconded the motion.

The motion carried.

EEO Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to repeal the EEO Program and Plan Policy, repeal the Equal Employment Opportunity Policy, and adopt a new Equal Employment Opportunity Policy. Background/Description of policy: The policy sets forth a standardized EEO policy which will be applicable for all state agencies, departments and universities, and this policy details the necessary requirements for compliance in all EEO Plans, which are reviewed and approved annually by the NC Office of State Human Resources. This will eliminate the need for any individual agency, department and university EEO Policies, allowing for one unified voice regarding Equal Employment Opportunity for the State of North Carolina. The two existing policies are being combined into the new "EEO Policy" to more effectively prescribe, within one consolidated policy, the requirements and expectations for equal employment opportunity including annual EEO Plans which are required in G.S. 126-19-19 to be submitted by all state agencies, departments and universities to OSHR by March 1 each year. There is a lot of duplication in the two policies which is unnecessary. In addition, the new policy will include provision of Governor McCrory's Executive Order No. 55 entitled Equal Employment Opportunity and guidance from the EEOC regarding reasonable

accommodation for pregnancy under the Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act Amendments Act (ADAAA).

Motion: Commissioner Falls made a motion to repeal the EEO Program and Plan Policy.

Seconded: Commissioner Sizemore seconded the motion.

Motion: Commissioner Falls made a motion to repeal the EEO Policy.

Seconded: Commissioner Sizemore seconded the motion.

Motion: Commissioner Falls made a motion to adopt the new EEO Policy.

Seconded: Commissioner Eller seconded the motion.

Motion: Commissioner Falls made a motion to approve associated rules and begin rulemaking process.

Seconded: Commissioner Sizemore seconded the motion.

The motions carried.

Promotion Priority Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to amend the Promotion Priority Policy and associated rules. The policy sets forth standards for administering promotion priority in accordance with G.S. 126-7.1. Amendments to the policy are a result of changes approved by the SHRC to the definition of “promotion” for career banded positions for salary administration purposes at the December 2014 meeting. This will align the Promotion Priority policy with the Career Banding Salary Administration policy. In addition, changes are necessary to clarify existing law or policy.

Motion: Commissioner DeVane-Hayes made a motion to amend the Promotion Priority Policy and associated rules.

Seconded: Commissioner Sizemore seconded the motion.

The motion carried.

Reduction in Force Priority Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to amend the Reduction in Force Priority Policy and associated rules. The policy sets forth standards for administering Reduction in Force (RIF) priority in accordance with G.S. 126-7.1. Amendments to the policy are a result of changes approved by the SHRC to the definition of “promotion” for career banded positions for salary administration purposes at the December 2014 meeting. This will align the RIF Priority policy with the Career Banding Salary Administration policy. In addition, changes are necessary to clarify existing law or policy and to match amendments made to the permanent rule as a result of comments received during the public comment period during rulemaking.

Motion: Commissioner Evans made a motion to amend the Reduction in Force Priority Policy.

Seconded: Commissioner Falls seconded the motion.

Motion: Commissioner DeVane-Hayes made a motion to amend the associated rules and begin rulemaking process.

Seconded: Commissioner Eller seconded the motion.

The motions carried.

Severance Salary Continuation Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to amend Severance Salary Continuation and associated rules. The policy sets forth standards for administering severance pay in accordance with G.S. 126-8.5(a). Amendments to the policy are necessary to comply with G.S. 126-8.5(a) which states that severance is only available to State employees if reemployment is not available. The law does not specify what type of reemployment (i.e. same level, same pay, same position type, etc.) so the current policy as written does not comply with the law. Additional amendments are necessary to clarify provisions of the policy.

Motion: Commissioner Eller made a motion to amend the Severance Salary Continuation Policy.

Seconded: Commissioner DeVane-Hayes seconded the motion.

Motion: Commissioner DeVane-Hayes made a motion to amend the associated rules and begin rulemaking process.

Seconded: Commissioner Falls seconded the motion.

The motions carried.

State Human Resources Commission Policy

Shari Howard, OSHR Rules and Policy Coordinator, requested approval to amend State Human Resources Commission Policy. The State Human Resources Policy states the purpose, duties, and membership requirements, and meeting requirements of the State Human Resources Commission. The policy is being corrected to reflect term limits for commissioners as stated in G.S. 126-2(c). The term limits were changed in Session Law 2013-382, but the policy was never revised to reflect this change. In addition, rules located in subchapter 01B of Title 25 related to the State Human Resources Commission contested case process were repealed as a result of final authority to hear contested cases being shifted from SHRC to the Office of Administrative Hearings for cases occurring on and after January 1, 2012. Since there are still about three pending cases filed prior to January 1, 2012 that fall under the jurisdiction of the SHRC, we need to have the process and procedures for filing documents for contested cases heard by the commission in the policy until all cases are completed.

Motion: Commissioner Evans made a motion to amend the associated rules and begin rulemaking process.

Seconded: Commissioner Sizemore seconded the motion.

The motion carried.

Rulemaking

- 01C .0311 – EMPLOYEE OBJECTION TO MATERIAL IN FILE

Motion: Commissioner Eller made a motion to repeal rule 01C .0311

Seconded: Commissioner Sizemore seconded the motion.

The motion carried.

- 01E .1603 – COVERED EMPLOYEES AND LEAVE CREDITS (Community Service Leave)

Motion: Commissioner DeVane-Hayes made a motion to amend rule 01E .1603

Seconded: Commissioner Evans seconded the motion.

The motion carried.

- 01H .1103 – DENIAL OF VETERANS PREFERENCE

Motion: Commissioner Falls made a motion to repeal rule 01H .1103

Seconded: Commissioner DeVane-Hayes seconded the motion.

The motion carried.

- 01J .1304 – SETTLEMENT/CONSENT AGREEMENTS IN GRIEVANCES, CONTESTED CASES

Motion: Commissioner DeVane-Hayes made a motion to amend rule 01J .1304

Seconded: Commissioner Sizemore seconded the motion.

The motion carried.

Withdrawn Rules:

01J .0618 - APPEAL OF DENIAL OF VETERANS PREFERENCE –
Rule was withdrawn after being filed as a permanent rule.

Motion: Commissioner Falls made a motion to terminate the adoption of rule 01J .0618

Seconded: Commissioner DeVane-Hayes seconded the motion.

The motion carried.

Periodic Review of Existing Rules-Subchapter 01D-Compensation Initial Classification Determination

Motion: Commissioner DeVane-Hayes made a motion to accept Periodic Review of Existing Rules-Subchapter 01D recommendations as unnecessary, necessary with no substantive public interest, or necessary with substantive public interest.

Seconded: Commissioner Sizemore seconded the motion.

The motion carried.

Adjournment

Acting Chair Barrett asked if there were any other business items to be heard during the business session. There being no additional items on the agenda, Acting Chair Barrett asked for a motion to adjourn the business session and immediately recess to go into Executive Session pursuant to the North Carolina General Statutes §§ 143-318.11(a)(6)(discussion of a public officer or employee), and pursuant to G.S. 143-318.11(a)(1) (for the purpose of “prevent[ing] the disclosure of information that is privileged or confidential pursuant to the law of this State . . .”) and 143-318.11(a)(3) (for the purpose of “consult[ing] with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body”).

Motion: Commissioner Falls made a motion to adjourn.

Seconded: Commissioner John seconded the motion.

The motion was made and carried.

Executive Session

The State Human Resources Commission voted and rendered a decision in the following case:

- **Linda K. Huggins v. NC DOA, 08 OSP 01153**

Attorney for Petitioner

No Attorney

Attorney for Respondent

Ann Stone, Assistant Attorney General

Minutes submitted by:

LaShanda Langley, State Human Resources Commission Administrator