

MINUTES

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

October 21, 2010

The State Personnel Commission (SPC) met on October 21, 2010. Chairman Alvin G. Ragland called the meeting to order. Members present were Chairman Alvin G. Ragland, Commissioner Susan Bailey, Commissioner George I. Allison, Commissioner Axel Lluch, 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 asked all Commissioners if there were any conflicts of interest with respect to any matters coming before the Commission. Commissioner Rascoe recused himself from the vote on the Proposed Local Government Salary Plans.

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

- Horace Blakeney v. University of North Carolina at Charlotte,**
09 OSP 5352

Attorney for the Petitioner	Ms. Tanisha P. Johnson
Attorney for the Respondent	Mr. Brian R. Berman
- Jewel C. Mosley v. Wilson County Health Department,**
Felix Meyer, Director, 08 OSP 2140

Attorney for the Petitioner	Mr. M. Travis Payne
Attorney for the Respondent	Mr. George A. Weaver
- Esther K. Dunn v. North Carolina Department of Commerce,**
Division of Tourism, Film and Sports Development, 09 OSP 3582

Attorney for the Petitioner	Mr. Charles R. Monteith, Jr.
	Ms. Shelli Henderson Rice
Attorney for the Respondent	Mr. I. Faison Hicks
	Ms. Ann Brown
- O'Tonious T. Raynor v. North Carolina Department of Health**
and Human Services, Emery Milliken, 09 OSP 4648

Appearing Pro Se	Mr. O'Tonious T. Raynor
Attorney for the Respondent	Ms. Charlene B. Richardson

Status of the Following Oral Argument Case

1. **Lawrence L. Stanley v. North Carolina Department of Health and Human Services, 09 OSP 4210 – Continued until the December 9,2010 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 for the August 19, 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.

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 Agriculture and Consumer Services agreed to establish a trainee progression for the International Marketing Specialist II class in order to address issues with recruitment. The agency was having difficulty in finding people with the experience to perform the job. The agency wanted to be able to recruit someone with less experience or that had just graduated from college. Once hired, these employees would receive on-the-job training.

The second item was to establish three new classifications for the North Carolina State Board of Elections. The new classifications were recommended in order to identify work which was unique to the North Carolina State Board of Elections and required specific knowledge, skills and abilities. A classification study of all the positions in the State Board of Elections was conducted between June and September of 2010 by the Office of State Personnel. The new classifications are designed to allow for the recognition of current and new Elections programs and services. Ms. Bowling recommended that the Commission approve the actions for classifications. **[See Attachment]**

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

Next, Ms. Bowling presented to the Commission, some changes to training and experience requirements. Ms. Bowling informed the Commission that this was a report for informational purposes only. Over the last few months the Office of State Personnel was

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approached by various agencies to make some changes to the training and experience requirements for some classifications. State Personnel Director Linda D. Coleman approved the requested changes. Ms. Bowling stated that the changes were usually for clarification and explanation of wording. **[See Attachment]**

Next Mr. Keita Cannon, Human Resources Partner, presented to the Commission, for consideration and approval, the Proposed Local Government Salary Plans for Fiscal Year (2010-2011) Mr. Cannon and Mr. Dominick D'Erasmus, Human Resources Partner reviewed the plans and submitted them for the approval of the Commission. Chairman Ragland asked if there were increases in recommendations of the ranges in the bands. Mr. Cannon stated that some places did increase salary ranges and some actually gave merit increases. Mr. Cannon further explained that each county operates independently. They have their own financial obligations. Chairman Ragland asked if some of the counties followed the state practice. Mr. Cannon stated that most of the counties operate independently because they report directly to the county. **[See Attachment]**

Chairman Ragland asked for a motion and second to approve the proposed salary plans, as presented by Mr. Cannon. Commissioner Allison made a motion to approve the proposed salary plans. Commissioner Lluich seconded the motion. The Commission voted. The motion was made and carried. **(Please note for the record that Commissioner Rascoe recused himself from the vote on this matter.)**

Next, Mr. Cannon, presented to the Commission, for consideration and approval, the Petition for Substantial Equivalency for Cabarrus County. Mr. Cannon explained that the petition covered two system portions; recruitment, selection advancement and classification and compensation. Mr. Cannon and Mr. Drake Maynard, Human Resources Managing Partner reviewed all of the submitted information and found that it met all of the necessary components to be deemed substantially equivalent. Therefore, Mr. Cannon recommended that the Commission approve the petition with an effective date of November 1, 2010.

Chairman Ragland asked if there were any questions. There being no questions, Chairman Ragland asked for a motion and second to approve the Petition for Substantial Equivalency submitted by Cabarrus County. Commissioner Grafstein made a motion to approve the Petition. Commissioner Bailey 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, Proposed Merit Based Recruitment and Selection Plans for the Wildlife Resources Commission, Office of State Budget and the Office of the Commissioner of Banks. The major revisions of the Wildlife Resources Commission's plan encompasses expanding management leadership responsible for administering the plan, reinforcing the statutory changes to Veterans' Preference priority, and streamlining/updating terminology. The

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major revisions of the Office of State Budget's plan include incorporating the statutory changes to Veterans' Preference priority and streamlining/updating terminology. The Office of the Commissioner of Banks submitted a Merit Based Recruitment and Selection Plan for approval. This agency was a division within the Department of Commerce. In 2005 legislation was passed to create the Office of the Commissioner of Banks as an independent agency. Many of the administrative, operational and logistical functions remain consistent with previous practices. The proposed plan incorporates all state policy requirements including the statutory change to the Veterans' Preference priority. Staff of the Office of State Personnel reviewed the proposed plans and recommended that the Commission grant approval for all three plans effective November 1, 2010. **[See Attachment]**

Chairman Ragland asked for a motion and second to approve the Proposed Merit-Based Recruitment and Selection Plans for the Wildlife Resources Commission, the Office of State Budget and the Office of the Commissioner of Banks as presented by Ms. Floyd, with an effective date of November 1, 2010. Commissioner Bailey made a motion to approve the Proposed Merit-Based Recruitment and Selection Plans. Commissioner DeVane-Hayes seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Peggy Oliver, Human Resources Policy Administrator, presented to the Commission, for consideration and approval, Hearing Officer's Reports on the following proposed rules in Title 25 of the North Carolina Administrative Code: **25 NCAC 1E.0103 Leave Offsetting, 1E.0203 Vacation Leave Credits, 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, 1J.0614 Definitions, 1J.0615 Special Provisions, 1N.0601 Purpose, 1N.0602 Policy, 1N.0603 Office of State Personnel Responsibility, 1N.0604 Agency Responsibilities, and 1N.0605 Employee Responsibility.** Ms. Oliver explained that the Commission approved the above-mentioned rules to begin the rulemaking process at its June 17, 2010 meeting. A public hearing was held to receive oral and written comments. There were no comments received. Ms. Oliver asked that the Commission approve the Hearing Officer's Reports so that the rules could be forwarded to the Administrative Rules Review Commission for consideration and approval. **[See Attachment]**

Chair Ragland asked if there were any questions. Commissioner Rascoe asked if the incentive leave rules might need to be revised again due to the shortfall of state funds. Ms. Oliver stated that a fiscal note was prepared and the note was reviewed and approved by the Office of State Budget. Ms. Oliver also stated that the cost was not a substantial cost. State Personnel Director Coleman stated that the incentive leave was something that would not be given to all employees that were hired. Director Coleman also stated that there are sets of skills that we don't have in state government. The state has to then pay people to come in. If the state cannot get those people, the state has to then pay more money for lesser skills. The state views this Rule as an enhancement. Chairman Ragland asked if there were any other questions or

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comments. There being no other questions or comments, Chairman Ragland asked for a motion and second to approve the Hearing Officer's Reports as presented by Ms. Oliver. Commissioner DeVane-Hayes made a motion to approve the Hearing Officer's Reports. Commissioner Bailey seconded the motion. The Commission voted. The motion was made and carried.

Next, the Commission addressed follow-up concerns regarding the following employee grievance policies and procedures that were tabled at the last meeting: North Carolina Community College System, North Carolina Department of Agriculture & Consumer Services, North Carolina Department of Environment & Natural Resources, North Carolina Department of Revenue, North Carolina Department of the Secretary of State, North Carolina Office of State Personnel and the University of North Carolina – Chapel Hill. Commissioner Stern stated that at the last meeting he had some concerns regarding whether or not the Commission should recommend that all grievance policies make whistle blower claims as covered grievable issues. Commissioner Stern stated that he determined after performing some research and speaking with other people that this might raise certain legal questions about choice of forum and exhaustion. Commissioner Stern stated that he was dropping his concern at this time so that it might be studied later.

Chairman Ragland asked if there was one template that the agencies and universities used in preparing the grievance policies and procedures. Mr. Drake Maynard, Human Resources Managing Partner stated that years ago there was one template. However, now agencies and universities are free to prepare the procedures the way they want as long as they include the minimum items. Mr. Maynard stated that he had discussed with Director Coleman on various occasions about having one single template so that when employees move from agency to agency or to a university, the procedures would not look strange or odd. The Office of State Personnel is currently working on preparing a template and program to bring to the Commission that would in some cases require and in other cases encourage the adoption of a singular template for grievance procedures.

Mr. Maynard, presented to the Commission, for consideration and approval, the tabled employee grievance and policy procedures from the August 19, 2010 State Personnel Commission meeting as well as the following additional procedures: North Carolina Department of Cultural Resources, North Carolina Department of Health & Human Services, North Carolina Department of Insurance, North Carolina Department of Justice, North Carolina Department of Labor, North Carolina Department of Public Instruction, North Carolina Department of the State Treasurer, North Carolina Office of Administrative Hearings, North Carolina Office of Information Technology Services, North Carolina Office of State Budget and Management, Appalachian State University, East Carolina University, Elizabeth City State University, and the University of North Carolina School of the Arts. Commissioner Stern asked that the University of North Carolina at Chapel Hill be presented separately so that Mr. Maynard could address the issues from the August 19, 2010 Commission meeting. The first question was regarding the definition of a witness that is contained in the Universities' policy. The concern was that the

definition appeared to be very restrictive. Mr. Maynard stated that he agreed that the definition was restrictive. Mr. Maynard explained that the hearings that the people would be witnesses to would not be due process hearings. If the University was defining the term “witness” at an Office of Administrative Hearing’s hearing, that would be difficult. Commissioner Stern stated that his concern, as addressed at the last meeting, was that an employee might have had a previous experience and with this definition they would be allowed as a witness at the hearing. Mr. Maynard stated that on a whole, the University felt that they would rather have a more restrictive definition, understanding that should an employee not be satisfied with the decision reached in the University’s procedure, they have the opportunity to appeal to the Office of Administrative Hearings for a due process hearing. The next question was regarding the University indicating the reduction-in-force was not a grievable issue. Mr. Maynard stated that was very consistent with other agency grievance procedures, as well as with Court of Appeals’ proceedings. The last concern was the non-grievability of documents in the performance management process. Mr. Maynard explained that Section 7 of the State Personnel Act says that documents in the performance management or the performance appraisal process are not covered by the inaccurate and misleading portion of the State Personnel Act which gives state employees the ability to grieve anything in their personnel file that they consider to be inaccurate or misleading.

Chairman Ragland asked if there were any questions. There being no questions. Chairman Ragland asked for a motion and second to approve all of the grievance procedures that were presented. Commissioner Bailey made a motion to approve the grievance procedures. Commissioner Rascoe seconded the motion. 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. **Mahatam S. Jailall v. North Carolina Department of Public Instruction, 07 OSP 1575**
2. **Mahatam S. Jailall v. North Carolina Department of Public Instruction, 08 OSP 1884**
3. **Steven Dancy v. Appalachian State University, 09 OSP 5566**
4. **Michael Karr v. North Carolina Department of Health and Human Services, Division of Vocational Rehabilitation Services, 09 OSP 5157**
5. **Allen R. Patton, Sr. v. North Carolina Department of Administration, Landscape Department, 10 OSP 1990**

6. **Purnell Sowell v. North Carolina Department of Transportation, Division of Motor Vehicles, 09 OSP 5262**