

MINUTES

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

February 19, 2009

The State Personnel Commission (SPC) met on February 19, 2009. Madam Chair Robin Adams Anderson called the meeting to order. Members present were Madam Chair Robin Adams Anderson, Commissioner George I. Allison, Commissioner Susan Bailey, Commissioner Axel Lluch, Commissioner Janie Harrell, Commissioner Brenda Smith, Commissioner Dean Shatley, Commissioner Caroline Lee 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. **Larry Campbell v. North Carolina Office of State Personnel**

Attorney for the Petitioner

William Woodward Webb

Attorney for the Respondent

Gary R. Govert

2. **Bobby Jones v. Walter B. Jones, ADATC, Facility of North Carolina
Department of Health and Human Services**

Attorney for the Petitioner

Alan McSurely

Attorney for the Respondent

Kathryn J. Thomas

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 December 11, 2008 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. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, state government classification and pay actions. Ms. Floyd explained that the Office of State Personnel and the Department of Correction conducted a classification and compensation study, which was mandated by the North Carolina General Assembly, regarding the Probation/Parole Officers in the Department of Correction.

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The purpose of the study was to address the recruitment and retention difficulties for qualified Probation/Parole Officers, given the high turnover and vacancy rates within the State of North Carolina. The study included the following classes: Probation/Parole Officer I and II, Probation/Parole Intensive Case Officer, and Community Service District Coordinator.

The study resulted in the following recommendations: a new classification for Judicial Services Coordinator; Judicial Services Specialist (the lead role in many operations); Probation/Parole Officer, which is to function in a “blended” role, replacing the current Probation/Parole Officer I and Probation/Parole Officer II roles; and Probation/Parole Field Specialist, which will serve as a Field Training Officer for new hires and will handle the caseloads of vacant Probation/Parole Officer positions. The Office of State Personnel also recommended, with the continued use of the established Trainee Progression, reducing the duration from two years to one year by which a trainee is to become fully qualified. The Office of State Personnel will work with the Department of Correction to pursue the abolishment of the old classes when the availability of funds makes the study implementation possible. Ms. Floyd requested the approval of the actions by the Commission with an effective date of April 1, 2009. Ms. Floyd stated that she would be glad to entertain any questions by the Commission.

Ms. Floyd also presented to the Commission for consideration and approval another recommendation as the result of a review within the Department of Agriculture and Consumer Services. It has been found that the overall concepts of the Regional Agronomist and Agronomist I classes have blended over time and would be best captured in one class. Ms. Floyd stated that a new class of Agronomist was being recommended and the Agronomist I and Regional Agronomist would be abolished as a result of the study. Ms. Floyd requested the approval of the actions by the Commission with an effective date of April 1, 2009 [**See Attachment**]

Chair Anderson asked if there were any questions. Commissioner Allison asked if the five new classes were replacing other classes. Ms. Floyd explained that there are exiting classes. As positions are moved from the old classes to the new, the old classes will be brought back to the Commission for abolishment. Ms. Floyd explained that those classes are not before the Commission at this point in order to give the Department of Correction time to implement and time to work out some funding issues. Commissioner Allison asked if these actions would cause any demotions. Ms. Floyd explained that there would not be any demotions and no cut in pay for any employee. Commissioner Allison asked if there would be any cuts in position counts. Ms. Floyd explained the Department of Correction would make that decision based on their workforce needs. Commissioner Peedin asked for the time frame that was given by the General Assembly. Ms. Lynn Freeman, Human Resources Managing Partner, responded that the Office of State Personnel was to report to the General Assembly by March 1, 2009. Chair Anderson asked for a motion and second to approve the state government classifications and pay actions presented to the Commission by Ms. Floyd. Commissioner Bailey made a motion to approve the actions. Commissioner Shatley seconded the motion. The motion was made and carried.

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Ms. Floyd also presented to the Commission for consideration and approval continuous recruitment requests for the Department of Correction – Probation/Parole Officer I, Probation/Parole Officer I Trainee, Probation/Parole Officer II, Probation/Parole Officer, and Probation/Parole Officer Trainee. Ms. Floyd explained that the Office of State Personnel staff had reviewed the request and were in agreement. Ms. Floyd asked that the Commission approve the continuous recruitment request. Ms. Floyd recommended an effective date of February 19, 2009 for the existing Probation/Parole Officer I, Probation/Parole Officer I Trainee, and Probation/Parole Officer II classes and an April 1, 2009 effective date for the Probation/Parole Officer and Probation/Parole Officer Trainee classes that are being established at the February 19, 2009 Commission meeting. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the continuous recruitment request from the Department of Correction. Commissioner Allison made a motion to approve request. Commissioner Smith seconded the motion. The motion was made and carried.

Next, Ms. Peggy Oliver, Human Resources Policy Administrator, and Mr. Drake Maynard, Human Resources Managing Partner, presented to the Commission for consideration and approval, **Rules 25 NCAC 1C.1004 Reduction-in-Force; 1D.0112 Total State Service Defined;** and **1H.0631 Posting and Announcement of Vacancies** to begin the rulemaking process.

Mr. Maynard explained that the amendment was proposed because of a decision of the North Carolina Court of Appeals that said that an issue regarding the manner in which a reduction in force is carried out is no longer considered a contested case issue. Mr. Maynard stated that he would be happy to respond to any questions. **[See Attachment]**

Chair Anderson stated that it was her understanding that there were two prongs to **Finstein**: (1) retaliation for opposition for discrimination; and (2) a veteran not receiving a veterans' preference. Mr. Maynard stated that that was correct. Chair Anderson stated that in reading the proposed changes she did not see where the veteran's status was being addressed. Mr. Maynard stated that the language did need to be in the rule and that it could be added before the rule was noticed. Mr. Maynard explained also that the language of the State Personnel Act makes it clear that it is the individual's opposition to discrimination against the individual and not on behalf of other individuals. Chair Anderson stated that she was in favor of holding this rule open until the veteran language was added. Chair Anderson asked if other Commissioners were in favor of holding the rule open until the next meeting. Commissioner Peedin stated that he was very much in favor of seeing the veteran language in the rule prior to approval. Chair Anderson also stated that she thought that language could be tailored from a Title VII aspect. Chair Anderson asked if anyone was opposed to holding the rule open. No Commissioners were opposed to holding the rule open. Chair Anderson asked Ms. Oliver if it was okay to hold the Rule open. Ms. Oliver said it was okay.

Ms. Oliver presented **Rule 25 NCAC 1D.0112 Total State Service Defined**. Ms. Oliver explained that there was an omission in the rule that was in the policy, which is to give credit for workers' compensation leave. Ms. Oliver also proposed other changes for clarification to the rule. Ms. Oliver recommended that the Commission approve the rule to begin the rulemaking process. [See Attachment]

Next, Ms. Oliver presented **Rule 25 NCAC 1H.0631 Posting and Announcement of Vacancies**. Ms. Oliver explained that the proposed amendment added the words "competency level" which makes a requirement to include in a posting announcement for banded classes the competency level for which that agency is recruiting. Ms. Oliver recommended that the Commission approve the rule to begin the rulemaking process. [See Attachment]

Chair Anderson asked for a motion and second to approve for proposed rulemaking **Rules 25 NCAC 1D.0112 and 1H.0631**. Commissioner Peedin made a motion to approve the rules to begin the rulemaking process. Commissioner Harrell seconded the motion. The motion was made and carried.

Ms. Oliver presented to the Commission, for consideration and approval, the Hearing Officer's Report on **Rule 25 NCAC 1H.0632 Applicant Information and Application (Amendment)**. Ms. Oliver explained that the Commission approved the proposed amendment of the rule at a previous meeting to amend the rule to allow for resumes to be accepted for use in the initial stages of the selection process. Ms. Oliver further explained that the rule had been noticed and a public hearing had been held. Ms. Oliver asked that the Commission approve the rule to be forwarded to the Administrative Rules Review Commission. [See Attachment]

Chair Anderson asked for a motion and second to approve the Hearing Officer's Report for **Rule 25 NCAC 1H.0632**. Commissioner Shatley made a motion to approve the rule. Commissioner Allison seconded the motion. The motion was made and carried.

Mr. Maynard presented to the Commission, for consideration and approval, the next Hearing Officer's Report on **Rule 25 NCAC 1I.2002 Types of Appointments and Duration (Amendment)**. Mr. Maynard explained that this Rule implements the change of several years ago to the career status portion of the State Personnel Act. It specifically makes career status applicable to local government employees who are subject to the State Personnel Act. Mr. Maynard explained that there had been a significant number of meetings with local government agencies, and county human resources offices to discuss the amendment. Mr. Maynard gave an example that if a person has achieved career status in County A and they move to a position under the State Personnel Act in County B, they have to serve a new probationary period in County B. Once they successfully complete the probationary period, they then again have career status. Mr. Maynard further explained that the rule had been noticed and a public hearing had been held. Commissioner Shatley asked about persons transferring, receiving a promotion, in the same county. Mr. Maynard stated that if someone achieved career status at Cumberland County

Department of Social Services and they transfer or take a promotion to Cumberland County Public Health; the probationary period would still take place. It would not take place if it were in the same agency. Commissioner Shatley stated that the language seemed to be unclear. Mr. Maynard stated that the language could be changed to “with a different county agency”. “Mr. Maynard asked that the Commission approve the rule to be forwarded to the Administrative Rules Review Commission. [See Attachment]

Chair Anderson asked for a motion and second to approve the Hearing Officer’s Report for **Rule 25 NCAC 11.2002** with the edit as proposed by Mr. Maynard. Commissioner Shatley made a motion to approve the Hearing Officer’s Report. Commissioner Lluch seconded the motion. The motion was made and carried.

Ms. Lou Kost, Human Resources Partner, presented to the Commission for consideration and approval as required by North Carolina General Statutes Chapter 143, the State Employees’ Workplace Requirements Program for Safety and Health Report (Fiscal Year 2007-2008). Ms. Kost gave a brief summary of the Report. The Report provides the following information: Safety and Health Program Assessment Summary for departments and universities; Department of Labor Inspections and fines for State facilities; Workers’ Compensation Data Summary and Statistical Data. Ms. Kost recommended that the Commission approve the Report to be forwarded to the General Assembly. [See Attachment]

Chair Anderson asked about the difference in compliance between the agencies and the universities. Ms. Kost stated that it might be because the universities have such a wider variety of issues to address. Chair Anderson asked if the Report addressed the number of claims that were denied. Ms. Kost stated that the information was located on page 12 of the Report. Commissioner Shatley asked if anyone had checked, as a part of the study, as to why in the past couple of years the number of denied claims had jumped. Ms. Kost explained that there was a glitch in the accounting process. There was an attempt to correct the error but the attempt was unsuccessful. Chair Anderson asked if there were any other questions. There were no further questions. Chair Anderson asked for a motion and second to approve the State Employees’ Workplace Requirements Program for Safety and Health Report. Commissioner Bailey made a motion to approve the Report. Commissioner Lluch seconded the motion. The motion was made and carried.

IV. Executive Session

1. Frances Brown v. Columbus County Department of Social Services