

5. **Jerry Rivas v. North Carolina Department of Transportation**

Attorney for the Petitioner
Attorney for the Respondent

Mr. Alan McSurely
Ms. Elizabeth N. Strickland

Status of the Following Oral Argument Case

1. **Cynthia White v. North Carolina School of Science and Math**

Commission continued this matter until the October 20, 2011 State Personnel Commission Meeting and extended jurisdiction for an additional 60 days.

Next on the agenda was the business session. Chairman Ragland asked if anyone signed up for Public Hearing. Mr. Ben Harward, Human Resources Director for the Department of Agriculture and Consumer Services, signed up for Public Hearing. Mr. Harward expressed his concerns regarding the ID Badge Policy. Mr. Harward explained that he supported a majority of the policy. Mr. Harward explained that a previous objection that he had regarding the policy was discipline for failure to comply had been removed from the policy. Mr. Harward felt that this would possibly create the possibility for discrimination by not treating employees the same. Mr. Harward objected that the policy stated that the badge must be worn at all times, nights and weekends. Mr. Harward presented to the Commission, proposed changes to the policy and the most frequently asked questions from he and Mr. David Shedan, Human Resources Director, Department of Administration. Mr. Harward stated that he thought that (1) badges for visitors should be worn at all times; (2) badges for employees to gain access should be visible; and (3) if there is a fire drill to show upon entry. Mr. Harward stated that once an employee is in their building and certainly not for nights and weekends, for employees of that building, there is no need for there to be a requirement that the badge be worn at all times. Ms. Anne Brown, Counsel for the Commission recused herself from any deliberations that might take place regarding the ID Badge Policy. Commissioner Stern wanted to know the reasoning for the proposed adoption of the policy. Commissioner Stern also wanted to know what effect the policy would have on law enforcement officials needing to know whether individuals in the building were employed there or now. Mr. Harward stated that he agreed that agencies should be allowed to set perimeters that are necessary for that agency. Commissioner Peedin asked how that would affect buildings that housed multiple agencies. Mr. Harward stated that he could see that might be a problem.

The first item on the business session agenda was the approval of the minutes of the June 16, 2011 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.

State Personnel Director Linda D. Coleman gave a brief report on the following matters: (1) the grand opening of the State Employees' Career Transitioning Center on Monday, August 22, 2011; and (2) the status of Senate Bill 781. Director Coleman also asked Ms. Valerie Bateman to give an update on the status of Senate Bill 781 and the impact that it would have on the State Personnel Act.

Ms. Bateman explained that the impact was on: (1) the rulemaking section; and (2) the contested cases process. Ms. Bateman stated that if it is not a rule, after January 1, 2012, you cannot enforce it. This language is now in the statute. Ms. Bateman stated that it is not clear that the State Personnel Commission can tell other agencies how they are going to do things unless it is a rule. Also, as of October 1, 2011, the rules have to be adopted according to the new rulemaking procedures which are very stringent. The second part of Senate Bill 781 affects the contested cases procedures. The Administrative Law Judge will be making the final decision. The Office of Administrative Hearings will no longer transmit a record that it made a recommended decision in, to the State Personnel Commission, but instead the Administrative Law Judge will make a final decision and that record will get transmitted by the Office of Administrative Hearings to Superior Court. Commissioner Grafstein asked if the Attorney General's Office would represent the state in this matter. Ms. Bateman stated that she was not sure but she thought the Attorney General's Office did take a position prior to passage by the General Assembly that it was unconstitutional. Commissioner Stern asked when the contested cases process would take place. Ms. Bateman stated that it would take place on cases filed after January 1, 2012. Any cases that are filed prior to January 1, 2012 will still come to the State Personnel Commission.

Chairman Ragland asked regarding the reduction-in-force, if all employees had been notified. Director Coleman stated that we are continuing to go through reduction-in-force. Director Coleman stated the largest reductions occurred effective July 1 because the budget required that and the money had to be reverted for the upcoming budget. Director Coleman stated there would still be reductions-in-force through this year. There would also be an effect due to the federal budget. There will possibly be reductions-in-force through consolidations. Commissioner Stern asked if it would be possible to provide the Commission with an update by agency of positions lost and the positions. This would give the Commission, meeting to meeting, just how large the numbers are. Director Coleman stated that Ms. Lynn Floyd would give that information in her presentation. Director Coleman also stated that a query had gone out to state agencies asking about the number of positions they have eliminated. Commissioner Stern wanted to know the positions where people were reduced as well as the positions that were reduced. Commissioner Stern also wanted to know the racial/gender break down of people that are reduced. Director Coleman stated that Ms. Nellie Riley would provide the Commission with

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that information. Chairman Ragland asked if counties and municipalities would be inclusive in the information. Director Coleman explained that it would not contain information on counties and municipalities.

Ms. Riley addressed Commissioner Stern's concern regarding the demographics of employees that were reduced-in-force. Ms. Riley stated that when it was known the reduction-in-force was coming, agencies and departments were asked to provide a potential list of how things were in terms of racial categories and demographics as well. Ms. Riley stated that they had received most of the information which was prior to the reduction-in-force actually happening. Ms. Riley stated that now the agencies and departments will be contacted and asked what actually happened. Upon receiving the information a comparison will be made. Commissioner Stern stated that he would like to know what agencies do not respond to the request. Chairman Ragland wanted to know if there were guidelines in which the agencies were to follow regarding the reduction-in-force. Ms. Riley explained the guidelines the agencies must follow. Ms. Riley stated that she would give the Commission a report once the information has been received.

Next, Ms. Nellie Riley, Human Resources Managing Partner, presented to the Commission, for consideration and approval, the 2010 Equal Employment Opportunity Status Report. Ms. Riley gave the historical background of the Equal Employment Opportunity Status Report. The Report analyzes the North Carolina State Government workforce within two sections: agency and university systems. The agency section includes information on all Cabinet and Council of State agencies. The university system consists of the 16 universities in the N.C. University System as well as UNC General Administration and the School of Science and Math. References to other minority groups include Asian, American Indian, and Hispanic employees. Next, Ms. Riley gave the highlights of the 2010 Equal Employment Opportunity Status Report. Ms. Riley suggested that the focus be on: (1) hiring more minorities at three levels; officials and administrators, management related and professionals; and (2) the hiring of more white females in the law enforcement category. Ms. Riley stated that she would perform the work on the adverse impact on reduction-in-force and bring the report back to the Commission. Ms. Riley asked the Commission to approve the Report so that it could be forwarded to the General Assembly. **[See Attachment]**

Chairman Ragland asked if there were any questions or comments regarding Ms. Riley's Report. Commissioner Stern asked Ms. Riley if she could provide the Commission with some recommendations that the Commission should do or could do to proactively to address areas that Ms. Riley identified that needed attention. Commissioner Allison asked Ms. Riley if she could also provide number of positions and/or personnel. Ms. Riley stated that she would. Chairman Ragland asked if the Commission could provide recommendations to the Report to be sent to the General Assembly. Ms. Riley stated that the Commission could provide recommendations.

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Chairman Ragland asked for a motion to approve the 2010 Equal Employment Opportunity (EEO) Status Report presented to the Commission by Ms. Riley. Commissioner Peedin made a motion to approve the actions. Commissioner Allison seconded the motion. The Commission voted. The motion was made and carried.

Ms. Riley also talked about accountability. Ms. Riley stated that her division is working on ways to add onto managers and supervisors work plans to be sure that they are held accountable for the area of diversity. Ms. Riley stated that things will not be changed if persons are not held accountable for this area.

Chairman Ragland stated that in looking at the report nearly two-thirds of the workforce would be retiring. Chairman Ragland stated that there are three components to the marketing of this area and that is: (1) building a pipeline; (2) providing the opportunity; and (3) the accountability.

Director Coleman informed the Commission of a new tool that the Office of State Personnel will be launching with the agencies. The new tool is called NC WORKS, Workforce Outlook Retirement Knowledge. This tool will provide data on any agency in State government. We can provide the agency with information on all of the demographics: (1) how many employees they have in certain categories; (2) employees that will be eligible for retirement in the next Director Coleman also discussed the Knowledge Transfer Program that would be another helpful tool.

Next, Ms. Pam Bowling, Human Resources Managing Partner, presented to the Commission, for consideration and approval, two (2) state classification and pay actions. Ms. Bowling stated that the first item was to abolish the graded classification of Therapeutic Camps Administrator since it is no longer being used. Next, Ms. Bowling gave an update of the Statewide Education and Experience Study. Ms. Bowling explained the purpose of the study. The information from the study is for information purposes only. **[See Attachment]**

Chairman Ragland asked if the Commission had any questions. Chairman Ragland asked for a motion to approve the state classification and pay action presented to the Commission by Ms. Bowling. Commissioner Grafstein made a motion to approve the action. 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, a Revised Merit Based Recruitment and Selection Plan from the Department of Correction. Ms. Floyd explained that the proposed plan met the State policy requirements. Staff of the Office of the State Personnel has reviewed the proposed plan and recommended that the Commission grant approval of the plan effective September 1, 2011.

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Chairman Ragland asked if the Commission had any questions. Chairman Ragland asked Ms. Floyd how she compared this plan to other plans that had been received. Ms. Floyd explained that it is compared against the standards that have been established by the Office of State Personnel. Ms. Floyd explained that a check list is also used in the process. Chairman Ragland asked for a motion to approve the Revised Merit Based Recruitment and Selection Plan for the Department of Correction presented to the Commission by Ms. Floyd. Commissioner Peedin made a motion to approve the Plan. Commissioner Bailey seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Floyd gave an update to the Commission on the reduction-in-force numbers. Next, Ms. Floyd presented to the Commission for consideration and approval, proposed policy and rule amendments in the area of reduction-in-force. House Bill 22 (Technical Corrections Act) revised the statutory provisions regarding Priority Consideration for State Employees that are separated due to reduction-in-force. Ms. Floyd gave key highlights on the bill. Ms. Floyd asked the Commission to approve the policy amendments and approve the rules to begin the rulemaking process. **[See Attachment]**

Chairman Ragland asked if the Commission had any questions or comments. Commissioner Stern asked that next time the language from the statute be placed in the materials so that the Commission will know where the proposed action begins. There being no other comments, Chairman Ragland asked for a motion to approve the proposed policy and rule amendments presented to the Commission by Ms. Floyd. Commissioner Bailey made a motion to approve the policy and rule amendments. Commissioner Hayes seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Ruth Barlow, Human Resources Managing Partner, was called to present the ID Badge Policy. In light of Mr. Harward's public hearing comments regarding the proposed policy, Ms. Barlow requested that the policy be removed from the agenda for further consideration.

Next, Delores A. Joyner, Rulemaking Coordinator, presented to the Commission, for consideration and approval, the Hearing Officer's Report on the following rules: (1) 25 NCAC 01H.0904 Agency and Employee Responsibilities; (2) 25 NCAC 1H.0905 Office of State Personnel Responsibilities; (3) 25 NCAC 1H.1003 Agency and Employee Responsibilities; (4) 25 NCAC 1H.1004 Office of State Personnel Responsibilities and (5) 25 NCAC 1N.0602 Policy. The public hearing was held on June 30, 2011. Ms. Joyner explained to the Commission the reduction-in-force rules were proposed in order to remove the requirement of reduction-in-force employees completing and forwarding a state application to the Office of State Personnel. The lactation support rule was proposed in order to ensure that adoptive mothers, who can and do express milk to nurse their babies, receive the same benefits afforded birth mothers under the lactation support policy. The rules were published in the North Carolina Register, Volume 25:18 dated March 15, 2011. No written or oral comments were received regarding the proposed rules.

Ms. Joyner asked the Commission to approve the Hearing Officer's Report so the rules could be filed with the Administrative Rules Review Commission for consideration. [See **Attachment**]

Chairman Ragland asked if the Commission had any questions or comments. Chairman Ragland asked for a motion to approve the Hearing Officer's Report presented to the Commission by Ms. Joyner. Commissioner Bailey made a motion to approve the Report. Commissioner Allison 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. **Mary Bach v. Gaston County Department of Social Services**
2. **Gary W. Buchanan v. North Carolina Department of Correction**
3. **Marva Michelle Courtney v. North Carolina Department of Transportation**
4. **Daniel Wayne Creson v. North Carolina Department of Correction**
5. **Tina McMillian v. North Carolina Employment Security Commission**
6. **Douglas Van Essen v. North Carolina State Board of Cosmetic Arts Examiners**
7. **Vera Wonsley v. Forsyth County Department of Social Services**