

MINUTES

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

August 16, 2012

The State Personnel Commission (SPC) met on August 16, 2012. Chair Susan C. Bailey called the meeting to order. Members present were Chair Susan C. Bailey, Commissioner Wayne Peedin, Commissioner Virgie DeVane-Hayes, Commissioner Thomas Stern, Commissioner Lisa Grafstein and Commissioner Mel Asbury. Pursuant to North Carolina General Statutes §138A, the North Carolina Ethics Act, Chair Bailey asked all Commissioners if there were any conflicts of interest with respect to any matters coming before the Commission. In the case of **Stephen Hyer v. North Carolina Office of the Commissioner of Banks**, Ms. Anne Brown, Legal Counsel for the State Personnel Commission, recused herself. Mr. Faison Hicks, Special Deputy Attorney General's Office acted as legal counsel in this matter. Also, Ms. Ann Cobb, Interim State Personnel Director, was not present during any discussions or deliberations in the case of **Dr. Donnal F. P. Crohan, II v. North Carolina Department of Health and Human Services**.

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

1. **Stephen R. Hyer v. North Carolina Office of the Commissioner of Banks**
Attorney for the Petitioner Mr. Michael C. Byrne
Attorney for the Respondent Ms. Tina Krasner

2. **Dr. Donnal F. P. Crohan, II v. North Carolina Department of Health and Human Services**
Attorney for the Petitioner Mr. Nathan B. Atkinson
Attorneys for the Respondent Ms. Bethany Burgon
Mr. Jonathan D. Shaw

3. **Tommie Porter v. North Carolina Department of Correction, Polk Correctional Institute**
Attorney for the Petitioner Ms. Rachael D. Rogers (no show)
Attorney for the Respondent Mr. Terence D. Friedman

4. **Herman Lee Graham, Jr. v. North Carolina Department of Health and Human Services, Caswell Center**
Attorney for the Petitioner Mr. Robert J. Willis (no show)
Attorney for the Respondent Ms. Charlene Richardson

5. **Ernest L. Powell v. North Carolina Department of Health and Human Services, Caswell Center**

Petitioner appear pro se
Attorney for the Respondent

Mr. Ernest L. Powell
Ms. Charlene Richardson

The State Personnel Commission voted to continue and extend jurisdiction in the following cases:

1. **Sheila Beck-Jones v. Hoke County Department of Social Services**
2. **Beatrice T. Jackson v. Durham County Health Department**
3. **Jerinda D. Staton v. Union County Department of Social Services**

Next on the agenda was the business session. Chair Bailey asked if anyone signed up for public hearing. No one signed up for public hearing.

The first item on the business session agenda was the approval of the minutes of the June 21, 2012 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. Nellie Riley, Human Resources Managing Partner, presented to the Commission, for consideration and approval, the 2011 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 2011 Equal Employment Opportunity Status Report. Ms. Riley stated that she would be glad to answer any questions the Commission might have.

Commissioner Asbury stated that having done this type of work before, this report would also be covering people with disabilities and veterans. Commissioner Asbury asked if these areas were tracked by the state. Ms. Riley stated that they are tracked by the state, particularly disabilities. Commissioner Asbury asked if there were plans around those populations. Ms. Riley explained that individuals may not be forthcoming in identifying themselves because they may not be sure of what will happen later. Ms. Riley explained that there was also some concern about whether the disability question should even be asked. Ms. Riley stated that there has been a steady decrease in representation of persons with disabilities. Ms. Riley stated that OFCCP has

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established some guidelines in regards to affirmative action and targeting for persons with disabilities and developing a plan. Ms. Riley explained that the veterans had their own law designed to increase their representation. Ms. Riley stated a lot of work really needed to be put into these efforts at improving representation of the two groups. Commissioner Asbury stated that there is a need to be proactive in both populations. Ms. Riley asked if Commissioner Asbury had any ideas as to what could be done. Commissioner Peedin stated that he would also like to see a way to track veterans' employment in state government. Commissioner Peedin further stated that several veterans are fearful to reveal that they are veterans for fear of discrimination by the agency. Ms. Riley explained that prior to BEACON, agencies were not allowed to put people on their payroll unless they identified their ethnicity. Since BEACON came into effect that is no longer a requirement and sometimes the agencies do not enter race/ethnicity information. Ms. Riley stated that she hoped that the Commission would take some action that would help in the discussions with BEACON. Also, Ms. Riley stated that there needs to be a culture to help individuals to want to identify themselves so that they don't feel that they will be penalized. Commissioner Peedin asked how the Commission could help. Ms. Riley stated that the Commission could give her a directive through a motion that would be on record that could be used as part of negotiations. Commissioner Peedin made a motion to authorize the Office of State Personnel to go forward with the tracking of persons with disabilities, veterans, and ethnicity. Ms. Valerie Bateman, Legal Counsel for the Commission, suggested that the Commission get some legal advice or discussion about potential litigation regarding that issue. Commissioner Asbury seconded the motion. Commissioner Peedin asked why there would be a need for litigation to determine how many veterans there are since the General Assembly has already given veterans preference in employment. Ms. Bateman stated that she was referring to issues related to disabilities. There is an issue involving EEOC currently that is pending. Ms. Bateman stated that before the Commission orders the Office of State Personnel to track this information, the Commission might need to get some legal advice about potential litigation. Commissioner Peedin withdrew his motion. Commissioner Peedin suggested that the Commission visit this matter in executive session and the decision will be considered at the next Commission meeting. Ms. Riley stated that it was up to the Commission, but that to delay this matter until October puts the Office of State Personnel further away from taking some action to work with BEACON, even if only to deal with the veterans and ethnicity questions. Commissioner Stern made a motion for the Commission to finish the current agenda, go into executive session to discuss, with benefit of legal counsel, and return with a response. Chair Bailey seconded the motion. The Commission voted. The motion was made and carried.

Chair Bailey asked for a motion to approve the 2011 Equal Employment Opportunity Status Report to be forwarded to the General Assembly as presented by Ms. Riley. Commissioner Grafstein made a motion to approve the report. Commissioner Peedin seconded the motion. The Commission voted. The motion was made and carried.

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Next Ms. Riley presented to the Commission for consideration and approval the Equal Employment Opportunity Policy revisions and the Unlawful Workplace Harassment Policy revisions. Ms. Riley explained that the policy revisions were necessary in order to conform to Senate Bill 781 (An Act to increase Regulatory Efficiency in Order to Balance Job Creation and Environmental Protection) which was enacted during the 2011 General Assembly Session. Ms. Riley gave an overview of the revisions and asked that the Commission approve the policy revisions. **[See Attachment]**

Chair Bailey asked for a motion to approve the policy revisions as presented by Ms. Riley. Commissioner Grafstein made a motion to approve the policy revisions. Commissioner Hayes seconded the motion. The Commission voted. The motion was made and carried.

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 resulted in updating the class specifications, including the education and experience requirements for the classification of Human Resources Placement Specialist located in the Department of Health and Human Services. The second item was the establishment of a new classification of Probation/Parole Associate in the probation/parole series in order to assist the Department of Public Safety in recruiting recent college graduates. Ms. Bowling explained that the Office of State Personnel staff had reviewed the requests and recommended that the Commission approve both items. **[See Attachment]**

Chair Bailey asked for a motion to approve the state classification and pay actions as presented by Ms. Bowling. Commissioner Peedin made a motion to approve the actions. Commissioner Stern 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, the Merit Based Recruitment and Selection Plan from the Department of Public Safety. Ms. Floyd explained that the plan had been developed to capture the recruitment and selection processes for the Department, which includes the former Department of Correction, Department of Crime Control and Public Safety, and Department of Juvenile Justice and Delinquency Prevention. Ms. Floyd stated that the Office of State Personnel staff reviewed the proposed plan and that it met the State policy requirements, therefore recommended that the Commission grant approval of the plan effective September 1, 2012. **[See Attachment]**

Chair Bailey asked if the Commission had any questions or comments. Chair Bailey asked for a motion to approve the Merit Based Recruitment and Selection Plan for the Department of Public Safety as presented by Ms. Floyd. Commissioner Grafstein made a motion to approve the Plan. Commissioner Hayes seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Floyd presented to the Commission for consideration and approval policy revisions to the Immigration/Employment of Foreign Nationals. Ms. Floyd explained that the revision clarified Section 1 of the Form I-9. Ms. Floyd asked that the Commission approve the revision of the policy. **[See Attachment]**

Chair Bailey asked if the Commission had any questions or comments. Next Chair Bailey asked for a motion to approve the policy revisions as presented by Ms. Floyd. Commissioner Hayes made a motion to approve the policy revisions. Commissioner Asbury seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Floyd presented to the Commission for consideration and approval, Rule 25 NCAC 1D .2701 Severance Salary Continuation, to begin the rulemaking process. Ms. Floyd recommended that this rule be amended in order to reflect the recent amendments to G.S. 126-7.1 (reductions in force) by the 2011 legislative session. Ms. Floyd gave a brief summary of the proposed amendments to the rule. Ms. Floyd asked the Commission to approve the rule to begin the rulemaking process. **[See Attachment]**

Chair Bailey asked if the Commission had any questions or comments. Commissioner Peedin asked if this would address the issue of employees for example volunteering for the reduction in force, receiving the severance package, and then retiring. Ms. Floyd explained that the employees are not volunteering for the reduction in force. Chair Bailey asked for a motion to approve Rule 25 NCAC 01D .2701 Severance Salary Continuation. Commissioner Peedin made a motion to approve the Rule. Commissioner Grafstein seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Shari Howard, Human Resources Partner, presented to the Commission for consideration and approval the Salary Administration – General Pay Policy revisions. The revisions were proposed in order to comply with the requirement of HB 950 (Session Law 2012-142) entitled (Modify the 2011 Appropriations Act). Ms. Howard explained that the revision to the policy was that if a verbal or written commitment on salary, the person must be made knowledgeable that it is subject to the availability of funding and the approval of that funding. Ms. Howard asked that the Commission approve the policy revisions. **[See Attachment]**

Chair Bailey asked if the Commission had any questions or comments. Chair Bailey asked for a motion to approve the policy revisions. Commissioner Grafstein made a motion to approve the policy revisions. Commissioner Hayes seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Sharon Howard, Human Resources Partner, presented to the Commission for consideration and approval grievance and mediation policy and procedures for the following agencies: (1) Department of Public Instruction and (2) Department of Public Safety. Ms. Howard explained that the policy for the Department of Public Safety is a consolidated policy from the former Department of Crime Control and Public Safety, Department of Juvenile Justice and Delinquency Prevention. The second policy for the Department of Public Instruction changed their policy to incorporate mediation into their grievance process. Ms. Howard stated that the Office of State staff had reviewed the policies and procedures for compliance with NCGS 126-34.1 and Sections 1 and 7 of the State Personnel Manual. Ms. Howard stated that each of the policies complied with those requirements. Ms. Howard recommended that the Commission approve the policies and procedures as submitted. **[See Attachment]**

Chair Bailey asked if the Commission had any questions or comments. Commissioner Stern asked if the policies and procedures had been vetted by SEANC or other interested parties. Ms. Howard stated that she did not think that SEANC had been involved in this process. Ms. Howard also explained that agencies may choose whether or not they want to adopt the employee appeals grievance or the employee mediation policy. Chair Bailey asked for a motion to approve the grievance and mediation policy and procedures for the Department of Public Instruction and Department of Public Safety. Commissioner Grafstein made a motion to approve the policy and procedures. Commissioner Peedin seconded the motion. The Commission voted. The motion was made and carried.

The Commission went into recess to consider the issue regarding the tracking of veterans, disabilities and ethnicity.

The Commission returned to give feedback on the issue regarding the tracking of veterans, disabilities and ethnicity. Commissioner Grafstein stated that the Commission went into executive session and received good counsel on this issue. Commissioner Grafstein also stated that it was the understanding of the Commission that the Office of State Personnel and the Interim State Personnel Director were very committed to collecting all of the information regarding veterans, disabilities and ethnicity, but that there might be a need to seek legal counsel to understand what the ramifications are regarding these areas. Commissioner Grafstein stated that the Commission would like to come back with a feasibility study of how the Commission can legally and efficiently collect the data, discuss what the plan might be, and how to proceed. Ms. Riley asked if that proposal was just for the disability part. The Commission responded that it was for all three parts (veterans, disabilities and ethnicity).

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. **Larry Murphy v. Employment Security Commission of North Carolina**
2. **Fortae McWilliams v. North Carolina Department of Correction**
3. **Dorothy H. Williams v. North Carolina Department of Health and Human Services, Central Regional Hospital**