

## MINUTES

### **STATE HUMAN RESOURCES COMMISSION MEETING LEARNING DEVELOPMENT CENTER 101 WEST PEACE STREET RALEIGH, NORTH CAROLINA**

**December 12 and 13, 2013**

The State Human Resources Commission (SHRC) met on December 12, 2013. Chair Susan B. Manning called the meeting to order. Members present were Chair Susan B. Manning, Commissioner Virgie DeVane Hayes, Commissioner Gloria Evans, Commissioner Phillip Strach, Commissioner Dan Barrett and Commissioner Martin Falls. Pursuant to North Carolina General Statutes §138A, the North Carolina Ethics Act, Chair Manning asked all Commissioners if there were any conflicts of interest or potential conflicts of interests with respect to any matters coming before the Commission. Chair Manning asked that if the Commission becomes aware of any conflicts of interest or potential conflicts of interest to identify the conflict and refrain from any participation in the matter involved. There being no conflict of interest or potential conflict of interest. Next, Mr. Martin Falls was sworn into office as a State Human Resources Commissioner by Administrative Law Judge Beecher R. Gray of the Office of Administrative Hearings.

Next, Chair Manning called the meeting to order. Chair Manning asked that each member of the State Human Resources Commission give a brief introduction of themselves.

Chair Susan Manning - Human Resources Consultant from Davidson, North Carolina. This was Chair Manning first Commission meeting. Chair Manning explained that she looked forward to working with the other members of the Commission and getting to know everyone better.

Commissioner Virgie DeVane Hayes - State Human Resources Commissioner from Sampson County.

Commissioner Philip Strach – Labor Employment Lawyer with Ogletree and Deakins in Raleigh, North Carolina.

Commissioner Gloria Evans – Employee of East Carolina University in Greenville. She is a SEANC (State Employees Association of North Carolina) representative.

Commissioner Martin Falls – Employee of the North Carolina Division of Veterans Affairs.

Commissioner Dan Barrett – Labor Employment Lawyer with Barrett Law Firm in Clemmons, North Carolina.

Ms. Anne Brown – Special Deputy Attorney General of the Department of Justice. Ms. Brown represents the State Human Resources Commission.

Mr. Neal Alexander, Jr. – Director of the Office of State Human Resources

Chair Manning asked if anyone had signed up for the public comment session. Mr. Tom Harris, General Counsel for the State Employees Association of North Carolina signed up for public comment session. Chair Manning told Mr. Harris that he had three minutes in which to make his presentation. Mr. Harris asked if he could have three additional minutes in which to make his presentation. Chair Manning asked for a motion. Commissioner Evans made a motion to allow Mr. Harris to speak an additional three minutes. No one seconded the motion. Chair Manning explained that since no one seconded Commissioner Evans' motion, the original three minutes of time stood. Mr. Harris thanked the Commission for approving the rules from the October Commission meeting as temporary rules instead of emergency rules. He explained that approving them as temporary rules gave SEANC an opportunity to review the rules during the process. However, the emergency rules process would not give SEANC an opportunity to comment on the rules before they were adopted. Mr. Harris explained that he would not discuss the remaining concerns, but that there was one remaining concern that he wanted to discuss. Mr. Harris addressed the concern in Rule 25 NCAC 01J .1101 Unlawful Workplace Harassment and Retaliation. This rule is being repealed. The Hearing Officer (Valerie Bateman) correctly points out that the prohibition on harassment and retaliation is being addressed in another proposed rule under subchapter 13. Mr. Harris explained that however, Rule 01J .1101 contains significant provisions that are not being replaced anywhere else. Specifically it defines different forms of harassment and requires each university and state agency to maintain a plan to provide training to prevent workplace harassment. Mr. Harris explained that SEANC felt that repeal of those provisions would greatly curtail the state's effort to prevent the most objectionable form of discrimination, which is not in the best interest of state employees and the state itself. Mr. Harris recommended that those provisions be reserved and/or moved to another section. Mr. Harris also recommended that stakeholders be involved earlier in the process.

The next item on the business session agenda was the approval of the minutes. Chair Manning asked for a motion to approve the minutes of the October 17, 2013 Commission meeting. Commissioner Hayes made a motion to approve the minutes. Commissioner Strach seconded the motion. The motion was made and carried.

The next item on the agenda was the approval of the proposed Commission meeting dates for the year 2014. Chair Manning asked for a motion to approve the proposed dates for the 2014 State Human Resources Commission meetings. Commissioner Strach made a motion to approve the proposed Commission dates for the year 2014. Commissioner Hayes seconded the motion. The motion was made and carried.

The next item on the agenda was the State Human Resources Director's Report. Mr. C. Neal Alexander, Jr., Director of the Office of State Human Resources (OSHR) thanked the Commissioners for coming to the meeting and taking time away from their work. He pointed out that we now have a full Commission. However, some of the Commissioners could not attend the meeting. Director Alexander explained that there was a heavy agenda due to policy and rule changes due to House Bill 834 Modernization of the State Human Resources Act. Director Alexander explained that one of the policy changes was just a tweak to the Reorganization Through Reduction Policy. Director Alexander explained that although the agenda was large, it was organized so that a summary had been prepared for each action. Director Alexander told the Commission that on the agenda was an area where the Commission would adjourn today and come back on tomorrow to consider the temporary rules for approval. Director Alexander explained that the reason for it being handled in that manner was because of the timeline in the rulemaking process. Director Alexander pointed out that the Office of State Human Resources (OSHR) includes human resources directors in the policies and rules and we also involve the legal staff.

Next, Mrs. Pam Bowling, Human Resources Managing Partner, presented to the Commission for consideration and approval, three state classification and pay items: Parole Case Analyst I, II and III. The Department of Public Safety and OSHR conducted a study of the Parole Case Analyst positions in the Parole Commission in the North Carolina Department of Public Safety. Based on the number of positions and significant changes that have occurred within the Parole Commission related to the Justice Reinvestment Act of December 2011, all offenders now received at least nine months of post-release supervision. All of these cases are reviewed by Parole Case Analysts who ensure that the cases are eligible for post-release supervision or parole based upon the nature of the crime and date of offense. The new classifications are recommended to recognize the organizational structure in the Parole Commission and to recognize the higher level duties of the analysts. Once the study is implemented, the current classifications will no longer be used and will be abolished at a later date. The recommended effective date for the classification actions was February 1, 2014. Ms. Bowling explained that OSHR staff had reviewed the information and recommended approval of the request.

Next, Ms. Bowling presented to the Commission, for consideration and approval, the state classifications of Public Safety Manager, and Public Safety Telecommunicator Supervisor. Ms. Bowling explained that the recommendation establishes two new classifications for the Public Safety Job Family in the career-banding system. The pay range minimum and maximum and market rates for each new classification were being established based on the labor market data and relationships to existing classifications. Employees are evaluated on competencies that determine their placement and position within the appropriate class. Salaries are administered based on the market rates designated for each level. Approval of the two new classifications would require that the positions performing these roles be identified and reclassified into the new classifications. OSHR staff would oversee the identification of the positions performing the roles and monitor the use of the classes. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the above-mentioned state classification actions presented by Mrs. Bowling. A motion was made by Commissioner Hayes to approve the classification actions. Commissioner Strach seconded the motion. The motion was made and carried.

Next, Mr. Dusty Wall, Human Resources Managing Partner, presented to the Commission, for consideration and approval, a Merit Based Recruitment and Selection Plan for the North Carolina Office of the Commissioner of Banks. The key plan revisions were as follows: 1) Update of the employment/reemployment priority language; 2) Minimum posting period changed to five (5) working days; 3) Appeal section removed as a result of HB 834's repeal of G.S. 126-14.4; and 4) Hiring manager to determine pool of most qualified applicants. OSHR staff reviewed the proposed plan and recommended that the Commission grant approval of the plan effective January 1, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the Merit Based Recruitment and Selection Plan for the North Carolina Office of the Commissioner of Banks as presented by Mr. Wall. A motion was made by Commissioner Strach to approve the Plan. Commissioner Barrett seconded the motion. The motion was made and carried.

Next, Mrs. Pam Bowling presented to the Commission, for consideration and approval the following rules in Title 25 of the North Carolina Administrative Code: 25 NCAC 1D. 2501 2511 to begin the rulemaking process. The above-mentioned rules pertain to the Comprehensive Compensation System. These rules became obsolete when the legislature repealed the statutory authority for the then existing comprehensive compensation system. This repeal recognizes that repeal and also the fact that the State's comprehensive compensation system is under study as directed by the legislature. The rules have no statutory authority because the statute under which they were adopted was repealed in the 2011-2012 legislative session. Once the State's Comprehensive Compensation System has been studied and revised, new rules and policies will be proposed. Mrs. Bowling requested that the Commission approve the proposed temporary rules to begin the rulemaking process. Mrs. Bowling also stated that OSHR would present an overview to the Commission on the Comprehensive Compensation System study at the April Commission meeting. **[See Attachment]**

Chair Manning asked if there were any more questions. Chair Manning asked why it took so long for to amend the rules to reflect the action taken by the General Assembly. Mrs. Bowling responded by saying that there were several other changes going on and this action may have been overlooked. Also, after the action was taken by the legislature, there was supposed to be a study out of the legislature on a new comprehensive compensation plan. That action did not take place and then in July it was transferred to OSHR and money was given to do the project. Mrs. Bowling explained that OSHR is supposed to report to the legislature on May 1<sup>st</sup> on what OSHR is working on now. That report will be OSHR's proposal on items OSHR wants to accomplish. There being no more questions, Chair Manning asked for a motion to approve the

proposed rules to begin the rulemaking process as presented by Mrs. Bowling. A motion was made by Commissioner Hayes to approve the proposed rules. Commissioner Barrett seconded the motion. The motion was made and carried.

Next, Mrs. Shari Howard, Human Resources Partner, presented to the Commission, for consideration and approval the In-Range Adjustment Policy. Mrs. Howard explained that the policy was established to provide guidance to agencies on when and how salary adjustments could be awarded to employees within their salary grade range. The policy applies to employees in graded classifications only. The policy allows agencies to administer programs to grant in range adjustments to employees in order to: recognize job change, establish equitable salary relationships, and/or respond to labor market conditions. The probationary policy was revised effective November 1, 2013 to reflect the change in the law redefining the probationary period from 3 to 9 months to 24 months. Agencies have expressed concerns about not being able to award salary increases for an extended period of 24 months. They are concerned that this may create unnecessary recruitment and retention problems. Mrs. Howard explained that OSHR is recommending probationary appointment be moved from ineligible to eligible for in-range adjustments. This revision will align the graded in-range adjustment policy with the banded career progression adjustment policy which currently does not restrict in-band increases based on appointment type. Mrs. Howard asked for an effective date of February 1, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the In-Range Adjustment Policy as presented by Mrs. Howard. A motion was made by Commissioner Evans to approve the Policy. Commissioner Falls seconded the motion. The motion was made and carried.

Next Mrs. Shari Howard presented to the Commission, for consideration and approval the Types of Appointment Policy. The policy delineates the types of appointments to positions in state government. The policy is proposed to be amended in order to align with HB 834 – Modernization of Human Resources Act. The policy changes the probationary period associated with appointments from the previous three to nine months to twenty-four months before an employee can achieve career status. Mrs. Howard requested the approval of the Policy with an effective date of January 1, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the Types of Appointments Policy as presented by Mrs. Howard. A motion was made by Commissioner Evans to approve the Policy. Commissioner Falls seconded the motion. The motion was made and carried.

Next, Mr. Ken Litowsky, Human Resources Partner, presented to the Commission for consideration and approval, the Grievance Review by State Agencies and OSHR and Available Remedies Policy. This policy was established to provide guidance to agencies on how grievances may be addressed by agencies when it is determined that an employee is entitled to some adjustment in employment as a result of a grievance. There are no substantive changes to

the policy or rules. They are only being amended in order to define their applicability to certain grievances and then newly adopted and reworded to apply to grievances that are filed on or after August 21, 2013.

HB 834 created a new grievance process. The Commission's policies dealing with the matters contained in the new policy were all written in terms of the old process: that is, in terms of what the Commission and the Administrative Law Judges could/could not order as a result of a successful grievance. It is now necessary, in light of the changes in Chapter 126, to adopt a new policy which would mirror the newly adopted rules. At the October meeting, most of the new rules contained in this policy were approved for rulemaking. The rest of those rules that mirror the rest of the provisions in this policy are being proposed. Mr. Litowsky requested that the Commission approve the policy and approve the following proposed temporary rules to begin the rulemaking process: 1) 25 NCAC 01B .0413 Exercise of Commission Discretion; 2) 25 NCAC 01J .1318 Exercise of Discretion in Determining Just Cause for Disciplinary Action; 3) 25 NCAC 01J .1319 Leave; 4) 25 NCAC 01J .1320 Health Insurance; 5) 25 NCAC 01J .1321 Interest; and 25 NCAC 01J .1322 Reinstatement. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the State Human Resources Commission/Employee Relations Policy and the rules to begin the rulemaking process as presented by Mr. Litowsky. A motion was made by Commissioner Strach to approve the Policy and the Rules. Commissioner Barrett seconded the motion. The motion was made and carried.

Next, Mrs. Sharon Howard, Human Resources Partner, presented to the Commission, for consideration and approval, proposed policy revisions to the State Agency Employee Grievance Policy. Mrs. Howard explained that this policy was written to adhere to HB 834 and was approved by the Commission at their October 17, 2013 meeting. OSHR is requesting several changes to the policy as a result of feedback received from various agencies. It is felt that the changes will strengthen and provide clarity to the grievance policy. OSHR is requesting the 30 calendar day notification to employees of the proposed policy changes be waived as the changes are not substantive in that they do not in any way change an employee's right to grieve. Commissioner Barrett asked if employees were aware of these proposed changes. Mrs. Bateman, legal counsel for OSHR, explained that these are not really procedural changes but semantic. The changes to the policy are not substantive. **[See Attachment]**

Chair Manning asked if there were any more questions. Commissioner Strach made a motion to approve the State Agency Employee Grievance Policy. Commissioner Barrett seconded the motion. Commissioner Strach asked to amend the first sentence on page 34 under the section entitled Formal Internal Grievance Process. The entire sentence would now read, "The employee must begin the formal internal grievance process by filing a written grievance with the agency HR Director or his or her designee", and then strike the rest of the sentence. Commissioner Falls seconded the motion to amend the policy as outlined by Commissioner Strach. The motion was made and carried. Chair Manning explained that the main motion was to approve the policy amendment as amended. Commissioner Barrett asked if the waiver was

separate or if it was a part of the main motion. Chair Manning stated that the waiver was a part of the main motion. Commissioner Barrett asked for an explanation of when you would have a waiver and when you would not and the policy reasons behind having a waiver. Mrs. Howard explained that in this situation, there was just a 30 day notification to all employees before the policy went into effect on December 1. Our thoughts for the waiver is that we don't want to stop the clock and providing another 30 day notification when it's just stating clarity and procedural changes. Mrs. Howard stated that once the Commission approves the policy, all HR Directors will be notified. Mrs. Bateman explained that the changes are not in the statute. The requirement that employees receive a 30 day notice is not statutory. It is a rule requirement. Technically the decision to make a waiver is under the authority of the State Human Resources Director. The Director has the authority to make exceptions to the policies and the rules. The Commission can make the waiver a technical part of the motion. The changes to the policy are not substantive. They do not affect an employee's right to file a grievance under this policy. The motion was made and carried.

Next, Mrs. Sharon Howard presented to the Commission, for consideration and approval, the University of North Carolina Employee Grievance Policy (UNC System Policy). The University Grievance Policy provides for prompt, fair and orderly resolution of grievances arising out of employment. The objectives of the policy are to: 1) Provide procedural consistency across agencies in North Carolina State Government; 2) Ensure employees have access to grievance procedures to address grievable issues timely, fairly and without fear of reprisal; and 3) Resolve workplace issues efficiently and effectively. The reason for the proposed change is to adhere to HB 834. Mrs. Howard asked for an effective date of March 1, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the University of North Carolina Employee Grievance Policy as presented by Mrs. Howard. A motion was made by Commissioner Hayes to approve the Policy. Commissioner Falls seconded the motion. The motion was made and carried. Chair Manning explained that she felt that the universities were being given an opportunity of being able to opt out of mediation when other agencies were not being given that same opportunity. Chair Manning stated that while she is a proponent of mediation she felt that it was unfair for agencies to have to mediate issues that were not capable of being successful. Commissioner Strach wanted to make the same amendment to this policy as to the State Agency Employee Grievance Policy. Commissioner Strach stated that page 7, section 8, the second sentence should read, "The grievant must begin the formal internal grievance process by filing a written grievance with the University Human Resources Director or his or her appointed designee. A motion was made by Commissioner Barrett to approve Commissioner Strach's proposed amendment of the motion. Commissioner Evans seconded the motion. The motion was made and carried.

Next, Mrs. Nellie Riley, Human Resources Managing Partner, presented to the Commission for consideration and approval Rules 25 NCAC 01C. 0202 Equal Employment Opportunity and 01J .0617 Discrimination and Retaliation to begin the rulemaking process as temporary rules. The rule (25 NCAC 01C. 0202) concerning equal employment opportunity appears in Chapter 1C Personnel Administration as one of the first rules. It appears to be somewhat out of place. In addition, it is not clear why this rule appears in Chapter 1C, but not 1A, 1B, 1D, 1E, 1F, or 1H, all of which are chapters which contain substantive rules governing the administration of human resources matters. Therefore, the decision has been made, in order to enhance the organization of the administrative rules, to repeal the rule in this location and move the rule to Chapter 1J, Employee Relations, which contains all of the new rules related to the passage to HB 834. The new rule will appear as 25 NCAC 01J .0617 and contain the updated terminology resulting from HB 834. These rules changes are proposed in order to streamline the EEO provisions; to reorganize sections to appear in the rules where they belong instead of random locations; and to update the terminology to reflect changes from HB 834. Ms. Riley requested an effective date of February 20, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the above-mentioned proposed rules to repeal one and by adopting the new language minus the word “creed” as presented by Mrs. Riley. A motion was made by Commissioner Hayes to approve the rules to begin the rulemaking process. Commissioner Evans seconded the motion. The motion was made and carried. Commissioner Barrett asked if this was mirroring statutory language. Mrs. Riley stated that this was mirroring statutory language. Commissioner Barrett was concerned that some things did not appear in the rule, such as military leave, and other protected classes. Commissioner Barrett asked if it would be appropriate to use a catch all phrase, i.e. “or any other legally protected classes”. Ms. Bateman stated that the only problem with that would be if there was a state statutory change versus a federal statutory change. Ms. Bateman explained that currently there are a lot of state and federal misalignments of protected rights, i.e. same sex marriage, same sex status. Mrs. Bateman stated that if we use the phrase, “or any other legally protected classes” we would have to be clear as to whether it is protected by state or federal law. Mrs. Bateman explained that it would be better right now to just address changes in the law on an individual basis. Commissioner Barrett stated that he didn’t think that was saying anything out of line by using the phrase, “or any other legally protected classes”. Mrs. Bateman explained that by making that change, it would be going beyond the temporary rulemaking process. It could be changed in the permanent rulemaking process. To make the change now would be making a substantive change. If we add that phrase, we could not say that was a change that HB 834 made. Mrs. Bateman explained that there is a whole chapter on Veterans Preference. Mr. Alexander asked if would be okay for OSHR to take a look at that matter. Commissioner Barrett asked if there was a special policy that addresses harassment. Mrs. Bateman stated that could be added back into the language if the Commission wanted to make a motion for that. Commissioner Barrett made a motion to add harassment back into the language and to change the title to the rule. Commissioner Falls seconded the motion. The motion was made and carried. Chair Manning asked Commissioner Barrett if he was okay with Director Alexander’s commitment to review his earlier concern without amending it today. Commissioner Barrett stated that he was okay with that, but felt that at some future time it should be put in a broader caveat or catchall.

Next Mrs. Paula Woodhouse, Deputy Director of the Office of State Human Resources presented for consideration and approval, amendments to the State Human Resources Commission Policy. Mrs. Woodhouse explained that this policy describes the purpose and duties of the Commission, and describes Commission operations per statute (G.S. 126). The reason for the policy amendments are due to HB 834 making changes to membership and operations of the Commission. The policy changes align with changes in the statute regarding membership. Other changes are for clarification and efficiency of Commission operations. Mrs. Woodhouse asked that the Commission approve the policy amendments with an effective date of January 1, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the policy revisions to the State Human Resources Commission Policy as presented by Mrs. Woodhouse. A motion was made by Commissioner Barrett to approve the policy revisions. Commissioner Hayes seconded the motion. The motion was made and carried.

Next Mr. Dusty Wall, Human Resources Managing Partner, presented to the Commission for consideration and approval the following rules to begin the rulemaking process: 1) 25 NCAC 1H .0633 Special Applicant Considerations and Employment of Relatives and 2) 25 NCAC 1H .0641 Employment of Relatives. This rule has two separate but not truly related topics combined. The first part of the rule addresses priorities in hiring situations. The second part of the rule provides rules for the employment of relatives. The rule is being amended to separate the two rules for organizational efficiency and to make searching for the rules easier. The Selection policy already has the two topics divided. The rule is being split into two separate rules. Hence, .0633 will contain the provisions on priority and a new rule, .0641, will contain the provisions on Employment of Relatives. The rule changes are not substantive. Nevertheless, the changes will be posted on OSHR's website and the opportunity for feedback will occur during the rulemaking process. Mr. Wall requested that the Commission approve the rules to begin the rulemaking process. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the proposed rules to begin the rulemaking process and approval of the policy as presented by Mr. Wall. A motion was made by Commissioner Hayes to approve the proposed rules to begin the rulemaking process and approval of the policy. Commissioner Strach seconded the motion. The motion was made and carried.

Next Mr. Wall presented to the Commission for consideration and approval the following items: 25 NCAC 1H .0636 Employment of Aliens / Employment: E-verify. This rule instructs agencies to verify that all employees are eligible to work and that agencies should use the E-verify program to do so. The rule is being amended to reflect a policy change that was apparently made some time in the past, but no corresponding rule change was proposed. The current rule does not specify that the E-verify system should be used to comply with the federal statute. This change will eliminate the inconsistency between the policy and rule. There were

discussions by the Commission to change the name of the rule from Employment of Aliens to Employment – E-Verify Program. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the above-mentioned rule to begin the rulemaking process as presented by Mr. Wall. A motion was made by Commissioner Strach to approve the rule to begin the rulemaking process. Commissioner Hayes seconded the motion. The motion was made and carried.

Chair Manning asked if there was a motion to amend the title of the rule to Employment – E-Verify Program. Commissioner Strach made a motion to amend the title of the rule. Commissioner Evans seconded the motion. The motion was made and carried.

Next Mr. Wall presented to the Commission for consideration and approval revisions to the Selection – Appeals Process. The rules and policies on the Selection process provide guidance to agencies in the selection process under Chapter 126. The policy contains appeal rights and information about the contested case process which was repealed and changed in HB 834. The policy is being amended to reflect that claims regarding selection as listed in the policy must go through the agency grievance procedure. The current policy section on appeals has incorrect information that needs to be corrected to comply with the recent statutory changes. This policy revision deletes the Contested Case Process information section and inserts an Appeals section to reflect HB834 changes to the appeals process. Mr. Wall requested an effective date of January 1, 2014. **[See Attachment]**

Chair Manning asked if there were any more questions. There being no more questions, Chair Manning asked for a motion to approve the policy revisions to the Selection – Appeals Process Policy as presented by Mr. Wall. A motion was made by Commissioner Strach to approve the policy revisions. Commissioner Falls seconded the motion. The motion was made and carried. Commissioner Barrett made a motion to amend the policy by adding in the word, “harassment”. Commissioner Evans seconded the motion. The motion was made and carried.

Next Ms. Lynn Freeman, Human Resources Partner, presented to the Commission for consideration and approval, policy revisions to the Reorganization through Reduction Policy. Mrs. Freeman explained that the amendment is being proposed in order to clarify the policy and to comply with the law. The amendment states that: A RIF as part of an approved RTR will require the abolishment of jobs. However, the funds saved from the abolishment of the job may be repurposed to create new positions so long as additional efficiencies and economies result from the creation of different jobs in agency operations. Employees who are reduced in force during RTR are eligible for standard severance salary continuation regardless of whether the funds for the position are repurposed. **[See Attachment]**

Chair Manning asked for a motion to approve the policy amendment to the Reorganization through Reduction Policy as outlined by Mrs. Lynn Freeman. Commissioner Barrett made a motion to approve the policy revisions. Commission Strach seconded the motion. The motion was made and carried.

Next Mrs. Valerie Bateman, Legal Counsel for the Office of State Human Resources (OSHR) presented to the Commission the Hearing Officer's Report on the following rules in Title 25 of the North Carolina Administrative Code:

**Subchapter B**

- 01B .0350 Time Frame for Raising Allegation of Discrimination (Amendment)**
- 01B .0413 Exercise of Commission Discretion (Amendment)**
- 01B .0414 Situations In Which Attorney's Fees May Be Awarded (Amendment)**
- 01B .0429 Recommendation of Disciplinary Action (Amendment)**
- 01B .0430 Removal of Material From Personnel File (Amendment)**

**Subchapter C**

- 01C .0311 Remedies of Employees Objecting To Material In File (Adoption)**
  
- 01C .0403 Trainee Appointments (Amendment)**
- 01C .0404 Probationary Appointments (Amendment)**
- 01C .0411 Types of Appointments Providing Probationary Period Credit (Amendment)**
- 01C .0412 Personnel Changes Subject To/Not Subject To A Probationary Period (Repeal)**

**Subchapter D**

- 01D .0201 Initial Employment (Amendment)**

**Subchapter E**

- 01E .0901 Approved Holidays (Repeal)**

**Subchapter H**

- 01H .0901 Policy And Scope (Amendment)**
- 01H .0902 Requirements for Reduction in Force Priority Consideration (Amendment)**
- 01H .0904 Agency and Employee Responsibilities (Amendment)**
- 01H .0905 Office of State Personnel Responsibilities (Amendment)**
- 01H .1001 Exempt Priority Consideration – Policy and Scope (Amendment)**
- 01H .1003 Agency Responsibilities (Repeal)**
- 01H .1004 Office of State Personnel Responsibilities (Repeal)**
- 01H .1005 Mandatory Right to A Position (Amendment)**

## **Subchapter I**

**01I .2002 Types of Appointments and Duration (Amendment)**

## **Subchapter J**

- 01J .0603 Appeals (Amendment)**
- 01J .0610 Written Warning (Amendment)**
- 01J .0615 Investigatory Leave (Amendment)**
- 01J .0616 Credentials (Adoption)**
- 01J .1101 Unlawful Workplace Harassment And Retaliation(Repeal)**
- 01J .1201 General Provisions (Repeal)**
- 01J .1202 Agency Responsibilities (Repeal)  
(Amendment)**
- 01J .1203 Agency Grievance Reports (Repeal)**
- 01J .1204 Discrimination And Retaliation/Special Provisions (Repeal)**
- 01J .1205 Unlawful Workplace Harassment (Repeal)**
- 01J .1206 Time Limits (Repeal)**
- 01J .1207 Final Agency Action (Repeal)**
- 01J .1208 Leave In Connection With Grievances (Repeal)**
- 01J .1301 Minimum Procedural Requirements (Repeal)**
- 01J .1302 General Agency Grievance Procedure Requirements (Adoption)**
- 01J .1303 Agency Grievance Reports and Data Entry (Amendment)**
- 01J .1304 Office of State Human Resources Review and Approval of Final Agency  
Decisions (FAD) (Adoption)**
- 01J .1305 Situations in Which Attorney's Fees may be Awarded (Adoption)**
- 01J .1306 Fees May Be Awarded As A Result Of A Settlement (Adoption)**
- 01J .1307 Back Pay (Adoption)**
- 01J .1308 Front Pay (Adoption)**
- 01J .1309 Certain Remedies Not Available (Adoption)**
- 01J .1310 Voluntary Program or Benefits (Adoption)**
- 01J .1311 Causes For Reinstatement (Adoption)**
- 01J .1312 Remedies for Procedural Violations (Adoption)**
- 01J .1313 Suspension without Pay (Adoption)**
- 01J .1314 Discrimination (Adoption)**
- 01J .1315 Remedies: Salary Adjustments (Adoption)**
- 01J .1316 Settlement/Consent Agreements in Grievances, Contested Cases  
(Adoption)**
- 01J .1317 Establishment of Reasonable Attorney Fees  
(Adoption)**
- 01J .1401 Minimum Procedural Requirements (Repeal)**
- 01J .1402 Flexibility (Repeal)**
- 01J .1403 Informal Meeting with Supervisor (Repeal)**
- 01J .1404 Mediation Procedure (Repeal)**
- 01J .1405 Conclusion of Mediation (Repeal)**

- 01J .1406    Limitations on A Mediation Agreement (Repeal)**
- 01J .1407    Post Mediation (Repeal)**
- 01J .1408    Employee Responsibilities for Mediation (Repeal)**
- 01J .1409    Agency Responsibilities for Mediation (Repeal)**
- 01J .1410    Office of State Personnel Responsibilities (Repeal)**
- 01J .1411    Agency Procedural Requirements for Employee  
Mediation and Grievance Policy (Repeal)**
- 01J .1412    Office of State Personnel Responsibilities for Employee  
Mediation and Grievance Process (Repeal)**

The statutory authority that gave the State Human Resources Commission the authority to amend the rules in the report was: G.S. 126-4; HB 834 (Session Law 2013, Ch. 382). The Commission approved the above-mentioned rules to begin the rulemaking process on October 17, 2013. Mrs. Bateman explained that this is minus two of the rules that were approved by the Commission because those rules were approved to go through the permanent rulemaking process. Those two rules are in the Office of State Budget and Management for approval of fiscal notes. The rules were posted on the State Human Resources Commission website on October 25, 2013. The Office of Administrative Hearings, Rules Division posted the rules on its website on November 4, 2013. The comment period ended on November 26, 2013. The public hearing was held on November 15, 2013. Mr. Tom Harris, General Counsel for the State Employees Association of North Carolina (SEANC) and Mr. Jack Nichols, North Carolina Attorney with the law firm of Allen, Pinnix and Nichols made oral comments and also submitted written comments regarding the rules at the public hearing. Mrs. Bateman went over each rule by rule summary, the requested rule action, comments/objections, OSHR response and the recommendation to the Commission in the Hearing Officer's Report. There were discussions regarding the comments and the recommendations to the Commission. The Commission did not vote on the Hearing Officer's Report at the December 12 meeting due to the rulemaking process requirements of the Rules Review Commission. Mrs. Bateman informed the Commission that she would provide them with the rules and any additional changes that afternoon.

Chair Manning asked if there were any additional questions. Chair asked how the Commissioners would receive the information. Chair Manning asked if everyone would be available for the teleconference. All Commissioners that were present stated that they would be available for the teleconference on December 13, 2013. Chair Manning stated that anyone could attend the remaining portion of the meeting. Chair Manning stated that the meeting was hereby adjourned until 9:00am, December 13, 2013.

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

**December 13, 2013  
(Minutes Continued)**

Chair Manning called the meeting to order and explained that this was a continuation of the December 12, 2014 Commission meeting for the purpose of adopting temporary rules. Commissioners in attendance by phone: Chair Manning, Commissioner Hayes, Commissioner Evans, Commissioner Strach, Commissioner Barrett, and Commissioner Falls. Chair Manning asked the Commissioners who were on the phone to identify themselves. Mrs. Bateman explained that she had talked with Mr. Tom Harris, General Counsel for the State Employees Association of North Carolina (SEANC), this morning. Mr. Harris was concerned that he might not get a chance to get to the meeting on time this morning. Mrs. Bateman informed the Commission that she and Mr. Harris had an opportunity to talk about his concerns. Mr. Harris asked Mrs. Bateman to convey to the Commission, if he was unable to get to the meeting on time that he was fine with the change that had been made. The change was regarding the unlawful workplace harassment rule. Mr. Harris was concerned that there would be a gap. Mrs. Bateman explained that Mr. Harris, Mrs. Riley, and she were satisfied with the current change because the plans are in place now and they cover the information that's required by part of this rule. Those plans will remain in effect and those plans will not go out of force and effect before the new Section L rules are adopted. Mrs. Bateman explained that there will not be a gap.

Chair Manning asked Mrs. Bateman if there were any more updates. Mrs. Bateman responded that she made the changes as requested by the Commission. Commissioner Barrett mentioned that there was a minor change in Section .1100. The word, "harassment" was spelled incorrectly. Mrs. Bateman agreed with that. Mr. Harris arrived and spoke regarding being in agreement with the change. Chair Manning mentioned that the rules in Section J. were listed as repeals. Chair Manning asked if these rules had been moved to another section. Mrs. Bateman explained how the rules would be moved to different areas. Chair Manning explained that this concerned her because there appeared to be the possibility that rules could be dropped. Mrs. Bateman explained that this was an afterthought, but that since these are being filed temporary it will be okay. Mrs. Bateman explained that it is okay because once the rules are filed permanently, this will be much clearer. Commissioner Barrett wanted to know what the process would be if there was a gap or if a rule needed to be changed. Mrs. Bateman explained that it would come before the Commission as soon as OSHR was aware of the need for an amendment. **[See Attachment]**

Chair Manning asked for a motion to approve the temporary rules as amended yesterday. Commissioner Strach made a motion to approve the temporary rules. Commissioner Falls seconded the motion. Chair Manning asked if there were any further questions. There being no further questions, the Chair asked for a voice vote. The roll was called. All Commissioners

voted aye. The motion was made and carried. Next, Chair Manning asked for a motion to adjourn the meeting. Commissioner Strach made a motion to adjourn the meeting. Commissioner Barrett seconded the motion. The motion was made and carried.