

**BOARD OF PERSONNEL APPEALS
MINUTES – APRIL 17, 2014 MEETING**

PRESENT:

Anne MacIntyre, Presiding Officer
Jay Reardon, Board Member
Rina Moore, Board Member

Steve Johnson, Board Member
Quint Nyman, Board Member

STAFF ATTENDING:

Tim Little, Board Attorney
Paul Melvin
Pam McDaniel

John Andrew
Diana Ferriter

BOARD BUSINESS

APPROVAL OF MINUTES (00:1.07):

Approval of the minutes for March 20, 2014 and April 9, 2014 were moved by Member Reardon and seconded by Member Moore. Motion passed 5-0.

NEXT MEETING DATE (1.07: 1.32):

The next meeting is scheduled for May 15, 2014.

PUBLIC COMMENT (2-3-103 MCA) (1.32: 1.58):

No comments were made.

STAFF/ATTORNEY COMMENTS – (1.58:3.14):

Board Attorney Tim Little updated the Board on the Rules Project. The Final Notice of Collyerization and the rule amended has been submitted to the Secretary of State's Office and will be published version by Friday and will circulate to the Board. This project is finally complete.

Pam McDaniel stated that Max Hallfrisch has notified the Governor's Office that he has stepped down. There will be a new alternate appointed by the Governor's Office.

MISCELLANEOUS (3:14-3:41)

No comments were made.

CONTINUATION – CLASSIFICATION APPEAL 1-2013

Ronald Mashek, et. al. vs. Department of Public Health & Human Services and State Human Resources Division, Department of Administration

Anne MacIntyre was the Presiding Officer in this matter. Marjorie Thomas and Frank Clinch represented the Department of Public Health & Human Services and the State Human Resources Division, Department of Administration. Lin Deola represented Ronald Mashek, et. al.

The matter before the Board was to determine if the Hearings Officer, David Scrimm erred in his Findings of Fact; Conclusions of Law; and Recommended Order for the Classification Appeal. There was a request that the Board notify the parties at the start of today's meeting that no discussion or deliberations with other Board Members happened in the interim. No Board members had any discussion or deliberations outside of their publicly noticed meetings. There was discussion in regards to the Members' thoughts on the case and the Hearings Officer's definition of internal equity in his decision. There were several motions made and they are listed below:

1. Presiding Officer MacIntyre moved to deny the Grievance Motion to Strike the January 14th Respondent's Brief. Member Nyman seconded the motion. Motion passed 5-0.
2. Presiding Officer MacIntyre moved to delete the following Findings of Fact as not based on substantial evidence, Finding of Fact 22 remove the first sentence; Finding of Fact 26 remove the last sentence; Finding of Fact 45 remove the last sentence; Finding of Fact 47 remove the last sentence; Finding of Fact 50 removed in its entirety; Finding of Fact 55 remove the last sentence; Finding of Fact 57 remove the last sentence and it's corresponding footnote; Finding of Fact 66 removed in its entirety; Finding of Fact 80 removed in its entirety; Finding of Fact 85 removed in its entirety; Finding of Fact 86 strike the words in 2007, substitute the word sometime and strike the words throughout the relevant timeframe; Finding of Fact 91 remove the last 2 sentences; Finding of Fact 96 strike in its entirety; Finding of Fact 11 remove the last sentence; Finding of Fact 116 removed in its entirety; Finding of Fact 119 removed in its entirety; Finding of Fact 121 removed in its entirety. Member Nyman seconded the motion. Motion passed 5-0.
3. Member Johnson moved to strike Finding of Fact 84 in its entirety. Member Nyman seconded the motion. Motion passed 5-0.
4. Presiding Officer MacIntyre motioned to delete the following Finding of Fact as constituting inaccurate Conclusions of Law. Finding of Fact 16 remove the last sentence; Finding of Fact 18 remove the second sentence; Finding of Fact 28 remove the footnote only; Finding of Fact 37; Finding of Fact 38 remove the last word – inequity; Finding of Fact 58; Finding of Fact 61; Finding of Fact 62 remove the second sentence; Finding of Fact 63; Finding of Fact 64; Finding of Fact 65; Finding of Fact 66; Finding of Fact 82; Finding of Fact 97; Finding of Fact 98; Finding of Fact 106 remove the last paragraph; Finding of Fact 114 strike the words – again purports to establish a pay plan, the period and the first two words strike so that it reads: The 2011-2013 CBA for CSED compliance specialists includes the following language. Member Nyman seconded the motion. Motion passed 5-0.
5. Presiding Officer MacIntyre moved to strike under Discussion the Waiver of internal equity starting at page 23 through page 35 up to point of the new header titled Conclusions of Law. Member Nyman seconded the motion. Motion passed 5-0.
6. Presiding Officer MacIntyre moved to strike the Conclusions of Law 4 through 8 and the substitute conclusions of law to reflecting the Board's conclusion that DPHHS has met its obligations of the broad band pay plan through collective bargaining. Member Nyman seconded the motion. Motion passed 5-0.
7. Presiding Officer MacIntyre moved to strike Conclusions of Law 10. Member Nyman seconded the motion. Motion passed 5-0.
8. Member Reardon moved to strike Conclusions of Law 9. Member Nyman seconded the motion. Motion passed 5-0.
9. Presiding Officer MacIntyre moved to strike the Recommended Order and the damages sections on pages 36 through 38 in its entirety and substitute it with an order dismissing the grievance. Member Nyman seconded the motion. Motion passed 5-0.
10. Presiding Officer MacIntyre moved to incorporate all of these changes into a revised draft and distributed to Board Members and have a telephonic conference call meeting to take final action on the draft. Member Nyman seconded the motion. Motion passed 5-0.

Presiding Officer MacIntyre has been working on a draft and has a lot of time into it and was hoping to have it done for the meeting but unable to do so. She will forward the draft to Board Attorney Tim Little and he will continue to work on it.

Meeting adjourned.
