

**BOARD OF PERSONNEL APPEALS
MINUTES – MAY 30, 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
Bill Smith

Pam McDaniel
John Andrew
Max Hallfrisch

BOARD BUSINESS

APPROVAL OF MINUTES (00:2.49):

Board Chair MacIntyre suggested the correction to the minutes with the following. On the first page, last paragraph, strike the word happened and insert: outside of their publicly noticed meetings. Then Board Attorney Little suggested the change in paragraph 2 on the second page to change Finding of Fact 37 to Finding of Fact 47. Approval of the minutes for April 17, 2014 were moved by Member Reardon with the suggested corrections and seconded by Member Nyman. Motion passed 5-0.

NEXT MEETING DATE (2.50:3.25):

The next meeting is tentatively scheduled for June 19, 2014. Currently there is nothing scheduled.

PUBLIC COMMENT (2-3-103 MCA) (3.26:3.37):

No comments were made.

STAFF/ATTORNEY COMMENTS – (3.38:4.10):

No additional comments were made by staff.

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 represent the Department of Public Health & Human Services and the State Human Resources Division, Department of Administration. Lin Deola represented Ronald Mashek, et. al. Neither party was in attendance for this Board meeting.

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. No Board members had any discussion or deliberations outside of their publicly noticed meetings. However, Board Chair MacIntyre has discussed the case with Board Counsel Tim Little. The meeting today was to go over the consideration of the Classification Appeal 1-2013 and the draft order to be issued.

Board Counsel Little discussed the structure of the order. It was decided that this case was unique in itself that he felt the need to create the order as our own Findings of Fact to make it easier for those reviewing the order if this were to go forward for a judicial review and to convey what the Board wanted.

In the first part of the order it has a discussion and this contains three fundamental conclusions of law that determine the outcome of this case. They were findings of fact or conclusions of law in the recommended order that were either rejected or adopted separate from the order. They are relatively light in citation and legal analysis. Some of these are issues of first impressions where there is no case law that is supporting our conclusion of law. These are conclusions that are up to the Board to determine the outcome. That is why some of these sections of analysis are somewhat short. The findings of fact section is what the Board adopted and did not touch in the recommend order; and eliminated the findings that the Board rejected; and amended the ones the Board modified. They have also been renumbered in sequential order making it easier for the reader. They are not in the same numerical number as the recommended order. The conclusions of law are relatively brief with only one new conclusion, number 4. The first three are adopted from the recommended order. He was quite careful when differentiating between broadband pay plan 20-18-301 and the broadband classification 20-18-201.

Concerns from the Board are:

Member Johnson questioned that we seem to spend our time in the document talking about internal equity and the advocates were geared the same way. When looking at 2-18-301 (4); it seems to him that internal equity is really only one of three factors that competency and competitiveness to the state and municipal labor markets. It seems to him that are really different than internal equity. A statement needs to be added that competency and competitiveness to other labor markets are really different than the discussion of internal equity. Advocates in some cases were arguing that only internal equity was what to be considered and not the other factors. Board Chair MacIntyre stated that it does make sense to note that in the discussion on internal equity on the bottom of page 3 and add a paragraph to address the concern. Board Counsel Little stated that it did turn towards only to internal equity because of how the parties argued it. It is a good point; the Hearings Officer has only elevated one factor and not all of the factors. He will address this in the paragraph.

Board Reardon asked if we would need to expand on part 2 of the order to address the internal equity. It was discussed and does not need to be addressed in that part.

Board Counsel Little wanted to thank Board Chair MacIntyre for helping with the draft. It made it easier for him to go through.

Board Chair MacIntyre had a ruling on the motion to strike in her initial draft. It was discussed and it should be documented in the beginning and at the end of the order. Finding of Fact 36 on page 8, she had proposed adding some language: However such analysis was not requested by the union. It was discussed and decided it was not necessary. In Findings of Fact 39 and 40, there are quotations at the end of both of them with emphasis added. She would like to strike both of those. In Findings of Fact 68 and 70 Janet Kelly is Department of Administration's Administrator and it should be removed and titled correctly as the Director as the Department of Administration. Finding of Fact 73 should be stricken. Board Chair MacIntyre motioned to remove Finding of Fact 73, Member Reardon seconded the motion. Motion passed 5-0. On page 16 there is a Finding of Fact 96 in the second paragraph and it should be given its own number and then renumbered. Her only other request is to use her middle initial L on the signature line.

Board Chair MacIntyre moved to adopt the draft final order with the changes discussed today with not making any changes to Findings of Fact 36. Member Johnson seconded the motion. Motion passed 5-0.

Meeting adjourned.
