

**ARIZONA STATE PERSONNEL BOARD
MEETING MINUTES
FEBRUARY 22, 2016**

The Arizona State Personnel Board meeting was called to order by Chair Mark Ziska at 11:25 a.m. The meeting was held at 1400 West Washington Street, Suite 280, Phoenix, Arizona. Board members in attendance were Joseph Beers, Joseph Smith, Kevin Donnellan and Jim Thompson. Staff members present were Jeff Bernick as Counsel for the Board, Laurie Barcelona, Executive Director and Robin Van Staeyen, Administrative Assistant II.

The board called for comments from the public. There being no public comments, Mark Ziska moved to adopt the minutes from the October 27, 2015 meeting and Joseph Beers seconded the motion which carried unanimously. Jim Thompson moved to adopt the minutes from the November 17, 2015 meeting and Mark Ziska seconded the motion which carried unanimously. Mark Ziska moved to adopt the minutes from the December 16, 2015 meeting and Jim Thompson seconded the motion which carried unanimously.

Next, the board considered the dismissal appeal of *Carlos Letona v. Department of Corrections*.

Martin Bihn, Attorney at Law representing Mr. Letona, stated that the issue is whether the department had the legal authority to put Mr. Letona on an original probation even though he was a 10-year employee. Mr. Bihn stated that the department only has the authority given to them by the statutes, which is defined in A.R.S. §41-741.10: "Original probationary period means the specified period following initial appointment to covered service." As explained by Mr. Bihn, Mr. Letona had voluntarily accepted original probation in order to keep his job, due to a previous disciplinary matter, but there are no provisions for putting an employee on original probation. Furthermore, an employee cannot accept terms and conditions that the department is not legally allowed to offer and in the Letona matter the department overstepped its boundary.

Mark Ziska inquired as to the negotiations Mr. Letona had with the department when he signed a document agreeing to be on probation. Mr. Bihn stated that the department used the term "original" probation, however, the department had no authority to put Mr. Letona on "original" probation, because it only applies to new employees.

Joseph Beers inquired as to whether the agency has the ability to set policies for issues that are not addressed in the rules. Mr. Bihn stated that the definition of original probation is defined in several places in the rules and laws. Mr. Beers then asked if Mr. Letona's new position could have been considered an initial appointment for a covered

service. Mr. Bihn restated that the rules define a new employee and it did not apply to Mr. Letona. Furthermore, Mr. Bihn explained, the hearing officer tried to get around this issue by stating in the recommendation that Mr. Letona had a break in service due to his demotion, but this was an incorrect interpretation of the law.

Mr. Donnellan asked Mr. Bihn for the Administrative Code he was referring to and Mr. Bihn provided that to him.

Mr. Ziska asked why the Berndt matter was cited and its significance to the Letona matter. Mr. Bihn responded by stating that the Berndt matter was referenced with regards to limiting the scope of the matter. He added that in the anticipation of the department filing a motion to dismiss he asked that if the hearing officer found Mr. Letona to be a permanent status employee then the matter would be resolved in Letona's favor due to the fact that the department did not afford Mr. Letona a Notice of Charges or an opportunity to respond.

Robert Sokol, Assistant Attorney General representing the Department of Corrections, stated that the law does allow the director of the Department of Corrections to adopt rules and policies to manage the department and its employees, but cannot adopt rules or policies that are in conflict with state law. Mr. Letona entered into an agreement with the department to avoid dismissal due to misconduct on his part and accepted a demotion to a covered position with an original one-year probation and while still on original probation Mr. Letona engaged in misconduct again. As a result, Mr. Letona was dismissed by the department. Mr. Sokol then read a quote from Mr. Bihn's motion to limit the scope of the hearing: "If the hearing officer finds ADC legally placed Letona on 'Original Probation' status then Letona had no property interest in his employment and no right to any post-termination hearing." Mr. Sokol added that the board has no jurisdiction in this matter and asked the board to uphold the hearing officer's recommendation.

There being no further discussion, Jim Thompson proposed the following motion:

"I move we adopt the hearing officer's Findings of Fact, Conclusions of Law as our own. I further move we grant the Respondent's Motion to Dismiss as the board does not have jurisdiction to hear the appeal of an original probationary employee."

Joseph Smith seconded the motion and the motion carried unanimously.

The board then elected the positions of chair and vice chair for calendar year 2016. Mark Ziska proposed the following motion:

"I move that Joseph Beers becomes our Chair for the next year and Jim Thompson becomes our Vice Chair."

Joseph Smith seconded the motion and the motion carried unanimously.

The board then considered scheduling the next board meeting. Mark Ziska proposed the following motion:

"I move we hold our next regularly scheduled open public meeting of the board on March 23, 2016, at 11:00 o'clock a.m. at 1400 West Washington Street, Suite 280, Phoenix, Arizona. I further move we hold an executive session on the same date at the same location at 10:30 a.m."

Joseph Smith seconded the motion which carried unanimously.

There being no further business before the board, Joseph Smith proposed the meeting be adjourned and Jim Thompson seconded the motion. The meeting adjourned at 11:46 a.m.

(Quotations of board members in these minutes have been reviewed by staff for grammatical content, and certain grammatical changes may have been made by staff administratively. No changes to content have been made by staff administratively or otherwise.)

Respectfully submitted:

Robin Van Staeyen
Robin Van Staeyen, Administrative Assistant II
Arizona State Personnel Board

March 9, 2016
Date Prepared