

**ARIZONA STATE PERSONNEL BOARD**  
**MEETING MINUTES**  
**APRIL 11, 2017**

The Arizona State Personnel Board meeting was called to order by Mark Ziska at 11:13 a.m. The meeting was held at 1400 West Washington Street, Suite 280, Phoenix, Arizona. Board members in attendance were Joe Beers and Kevin Donnellan. Chad Kirkpatrick was not present. 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, Joe Beers moved to adopt the minutes from the February 15, 2017 meeting. Kevin Donnellan seconded the motion which carried unanimously.

Next, the Board considered the jurisdiction appeal of **Carlos Letona vs. Department of Corrections**.

Donna McDaniel, Attorney at Law representing Mr. Letona, who appeared telephonically, stated that this case was taken to the Superior Court after the Personnel Board found that they had no jurisdiction over Mr. Letona's appeal. It was determined by the Superior Court that Mr. Letona was entitled to an appeal by the Personnel Board. Ms. McDaniel continued by stating that the hearing officer's recommendation set no cause and there was no rescission of the dismissal by the department.

Mark Ziska asked Ms. McDaniel to explain the leave time paid to Mr. Letona. Ms. McDaniel stated that leave time is received whether the employee worked or not. Mr. Ziska then inquired as to why the Board is being asked to reverse the action of the dismissal. Ms. McDaniel explained that the retirement system laws changed during the time Mr. Letona was dismissed from the department; therefore, the dismissal must be reversed by the Board so that Mr. Letona can be grandfathered into the old laws of the retirement system.

Kevin Donnellan inquired as to whether they are to hear the merits of the case. Ms. McDaniel stated that the hearing officer conducted a hearing on the merits, however, the department had no evidence because they claimed Mr. Letona had no due process rights at the time he was dismissed.

Mark Ziska inquired about the holiday pay. Ms. McDaniel stated that the employee gets leave time put on their account. Mr. Ziska asked if Ms. McDaniel is asking for 80 hours of leave time be put on Mr. Letona's account. Ms. McDaniel stated that the department paid the 80 hours of leave time in the same check with the back pay, but asked the department to reflect that Mr. Letona was entitled to receive the 80 hours of leave time.

James Green, Assistant Attorney General representing the Department of Corrections, stated that a hearing on the merits was not conducted, Mr. Letona's dismissal was rescinded and all reference was removed from his personnel file; therefore, the Board has no need to find just cause for a matter that does not exist. Mr. Green continued by stating that the Board is to determine whether the back pay Mr. Letona received was appropriate.

Mark Ziska inquired about Mr. Letona's retirement issue. Mr. Green stated that Mr. Letona withdrew his funds from his retirement plan. Additionally, Mr. Green explained that there was an administrative error in the dates, which has been corrected. Mr. Ziska asked whether the Board has any relationship with the retirement system for the department. Mr. Green answered in the negative.

Kevin Donnellan asked Mr. Green to confirm that the Board is to determine whether the back pay Mr. Letona received was appropriate. Mr. Green answered in the affirmative.

Mr. Green continued by stating that based on the Superior Court decision, Mr. Letona was reinstated and then received a Notice of Charges. As explained by Mr. Green, the hearing officer limited the scope of the hearing to determine the back pay and benefits Mr. Letona was entitled to receive and it was not a hearing on the merits because the hearing officer stated that it was moot on the issue of reinstatement.

Mark Ziska inquired as to what Mr. Green is asking of the Board. Mr. Green stated that the Board should not make a finding with regards to whether just cause existed for Mr. Letona's dismissal because the dismissal was rescinded, as well as make a finding that the payment of the uniform allowance is improper.

Kevin Donnellan inquired as to why the Board was being asked to find just cause. Mr. Green stated that there is no obligation for the Board to make a finding of just cause because by statute the Board must only make a finding on just cause with regards to discipline. However, in this matter the dismissal was rescinded and the discipline Mr. Letona received upon returning to work is not under the jurisdiction of the Board. Furthermore, on the issue of uniform pay, Mr. Letona had no need to purchase or maintain uniforms during his time away from the department and, therefore, should not be paid the uniform allowance.

Kevin Donnellan inquired as to whether the Board is only being asked to make a determination with regards to the uniform allowance. Mr. Green answered in the affirmative. Mr. Donnellan then asked Ms. McDaniel what she believes the Board is to rule on in the Letona matter. Ms. McDaniel stated that on December 5, 2016, the Board was requested by Mr. Letona to reverse the decision of the Department of Corrections and to reinstate with back pay. Continuing, Ms. McDaniel stated that the hearing officer found that the dismissal was not rescinded and Ms. McDaniel has not been presented with any documentation stating that the dismissal was rescinded.

Furthermore, after Mr. Letona was terminated, the rules that applied to Mr. Letona's retirement system changed and he is now considered to be a new employee. Ms. McDaniel stated that if there is to be a reduction in back pay, there must be a finding by the Board that the appellant prevailed; therefore, the Board cannot reduce Mr. Letona's back pay.

Kevin Donnellan asked if the reduction Ms. McDaniel is referring to is the uniform allowance. Ms. McDaniel stated that she is referring to the earnings for alternative employment, but with regards to the uniform allowance, the allowance is paid without any designation as to how the money is to be used. Mr. Donnellan summarized that Ms. McDaniel is asking the Board to rescind the dismissal, award the uniform allowance, as well as additional funding. Ms. McDaniel stated that she is asking the Board to adopt the hearing officer's Findings of Fact and Conclusions of Law and Recommendation and added that the Board cannot take away earnings by Mr. Letona for alternative employment if the Board has not made a finding. Under A.R.S. §38-1106 and A.R.S. §41-783 the Board must make findings, because there is an appeal before the Board and there is an obligation to make a finding.

Mr. Green stated that Mr. Letona did prevail on appeal at the Superior Court level by which Mr. Letona was determined to be a covered employee and this determination resulted in Mr. Letona being reinstated and his dismissal rescinded. Mr. Green did not believe the Board is required to make a finding under the circumstances. Ms. McDaniel replied by stating that she is asking the Board to document the fact that Mr. Letona prevailed on appeal by making the findings and conclusions that the Board is required to make.

Kevin Donnellan made a motion for the Board to go into executive session. The Board went into executive session at 11:45 a.m. and resumed the open session at 12:17 p.m.

There being no further discussion, Mark Ziska proposed the following motion:

"I move we adopt the hearing officer's Recommendations #2 through #6 with the understanding that compensation has been paid, with the addition of the \$720 disputed amount. I further move that the Board receive evidence of the rescinded dismissal before a ruling can be made on that issue. For all other issues, including whether just cause existed, the parties are to return to the hearing officer for a hearing on the merits so a determination can be made with regards to just cause."

Joe Beers seconded the motion which carried unanimously.

There being no further business before the Board, Mark Ziska proposed the meeting be adjourned. Joe Beers seconded the motion which carried unanimously. The meeting adjourned at 12:20 p.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

4/27/17  
Date Prepared