

**ARIZONA STATE PERSONNEL BOARD**  
**MEETING MINUTES**  
**OCTOBER 25, 2017**

The Arizona State Personnel Board meeting was called to order by Chair Mark Ziska at 11:09 a.m. The meeting was held at 1400 West Washington Street, Suite 280, Phoenix, Arizona. Board members in attendance were Joe Beers, Kevin Donnellan and Chad Kirkpatrick. 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 August 23, 2017 meeting. Joe Beers seconded the motion which carried unanimously.

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

Donna McDaniel, Attorney at Law representing Mr. Letona, stated that this is the third time she has appeared before the Board in this matter. She added that the Board has jurisdiction and the statutes must be applied, which would result in a reversal of the dismissal and find that there was no just cause.

Kevin Donnellan inquired as to the basis of the Board's jurisdiction. Ms. McDaniel replied that initially the issue was whether Mr. Letona was a covered employee and it was appealed to the Superior Court and the Superior Court determined that Mr. Letona was a covered employee. The issue at the second Board meeting in this case was whether the department had rescinded the dismissal and the Board sent this case back to a hearing officer to give the department the opportunity to present evidence of the rescission; however, the department stated that they did not rescind the dismissal. Ms. McDaniel reiterated that the Board has jurisdiction; there is a dismissal and appeal on the record and A.R.S. §41.783 gives the jurisdiction to the Board over the appeal. Mr. Donnellan inquired about the specific relief within the recommendations that she outlined. Ms. McDaniel stated A.R.S. §41.783(C) states that if there is no cause for the disciplinary action the Board must reverse and A.R.S. §38-1106(K), which applies specifically to law enforcement officers, states that in every finding the Personnel Board must state whether there was just cause for the dismissal and because there is no cause stated for the dismissal at all, there cannot be just cause. Mr. Donnellan inquired as to which recommendations have not been adopted by the Department of Corrections. Ms. McDaniel explained that the department has not adopted any recommendations thus far because the Board first makes its findings and then the department either accepts or rejects the Board's decision. Mr. Donnellan stated that since the reinstatement of Mr. Letona there is some confusion as to what actions have already been taken and what is yet to be determined. Ms. McDaniel stated that the discipline has not been reversed, which was the recommendation to the Board by the

first hearing officer, as well as to find no just cause and award back pay. The Board ordered back pay without reversing the discipline.

Mark Ziska asked for confirmation of his recollection of the last Board meeting and the issue of Mr. Letona being hired as a "rehire" or "reinstated" and if Mr. Letona was "rehired" it would affect his retirement plan. Ms. McDaniel answered in the affirmative, but added that Mr. Letona's personnel file has conflicting information where in one place it states Mr. Letona's dismissal was reversed as recommended by the Board and in another place his dismissal was reduced to an 80-hour suspension. It was requested by Ms. McDaniel to clean up Mr. Letona's personnel file. Mr. Ziska asked if Mr. Letona was reinstated or rehired. Ms. McDaniel stated that he was reinstated and rehired, but as a new employee without any seniority; with a new hire date of December 2016 even though he had been working for the department for quite some time.

Joe Beers asked for the definition of reinstatement. Ms. McDaniel explained that the term "reinstatement", as used by the Board, means reinstated to your previous position with back pay and benefits; with the same status as before, but this is not what happened for Mr. Letona. A letter sent to Mr. Letona by the department claimed it was a reinstatement, but he was re-entered into the system as a new hire. Then, the Board was asked to give Mr. Letona back pay, which is based on a statute that applies when a dismissal has been reversed. The department has a different definition of what happened to Mr. Letona and Ms. McDaniel asked the Board to clarify. Continuing, Ms. McDaniel explained that Mr. Letona received an 80-hour suspension upon returning to the department even though there was an appeal before the Board for his dismissal.

Chad Kirkpatrick asked for clarification as to what she wants the Board to decide. Ms. McDaniel stated that she wants the Board to reverse the dismissal. A.R.S. §41-783 states that if there is no cause for the dismissal, it must be reversed. The Board has had jurisdiction over this appeal since December 2015, but the department is trying to usurp the Board's authority. Mr. Kirkpatrick asked for clarification as to Mr. Letona's employment status at the time of his dismissal. Ms. McDaniel explained that the department thought they could dismiss Mr. Letona without due process and without cause, believing he was an uncovered employee when he was indeed a covered employee. The department reinstated Mr. Letona but did not reverse the discipline and continued with the appeal. The Board then ordered back pay, but did not make the prerequisite finding of reversing the dismissal. Mr. Letona's dismissal is still in a grey area because the Board has not reversed the dismissal and the department does not have the authority to reverse the dismissal because it is on appeal to the Board. Mr. Kirkpatrick asked whether there is a concern that the department will try to dismiss Mr. Letona. Ms. McDaniel explained that having a dismissal on his record without it being reversed has consequences for Mr. Letona, which could be used against him in the future. Additionally, Ms. McDaniel is asking the Board to add additional monies of back pay for Mr. Letona for insurance benefits he would have had. Ms. McDaniel stated that

Mr. Letona is asking for a reversal of the dismissal, a no cause finding and additional monies for insurance benefits that were deducted from his pay.

Mark Ziska stated that he thought the Board has accomplished all the requests by adopting the hearing officer's recommendation. Ms. McDaniel stated that only Recommendations 2 through 6 of the first hearing officer's report were adopted, which had to do with back pay, but the Board did not adopt the hearing officer's recommendation to grant the appeal and reverse the action of dismissal. Mr. Ziska stated that he recalled a settlement. Ms. McDaniel stated that was not the case, but that there was a good amount of conversations between the parties and the hearing officer with regards to why there needed to be a hearing and if so, what would be the scope of the hearing. Ms. McDaniel felt there was no need for a hearing because there was no allegation of misconduct; however, Mr. Green wanted a hearing because the Board needed to apply A.R.S. §38-1106(K), which states that when a disciplinary action has been reversed the Board can act on back pay; however, Ms. McDaniel explained that the hearing officer limited the scope of the hearing for back pay issues only. Before the Board at the last meeting, Mr. Green stated that the department rescinded the dismissal and the Board did not have jurisdiction. Continuing, Ms. McDaniel stated that the Board's order was to take this case back to a hearing officer and the department was to present evidence that the department rescinded the dismissal, but there was no settlement.

James Green, Assistant Attorney General representing the Department of Corrections, stated that when the Superior Court's decision was made that Mr. Letona was a covered employee, the department had a legal obligation to reinstate him for giving him due process and at that point he was classified as a rehire and had not been given back pay before the department decided what level of discipline would be appropriate. Mr. Green continued by explaining that Mr. Letona was given a notice of charges and an opportunity to respond. Even though there was just cause for Mr. Letona's dismissal, the director opted to give Mr. Letona an 80-hour suspension and Mr. Green stated that the action of Mr. Letona receiving an 80-hour suspension reversed the dismissal. Mr. Green admitted that some errors were made with Mr. Letona's rehire. The Department of Administration (DOA) requested there be something in writing to justify the change for Mr. Letona's start date; therefore, the department gave DOA the hearing officer's recommendation as written justification for having Mr. Letona's seniority date changed. Mr. Green stated that the hearing officer's recommendation is incorrect with reference to conceding that the department never rescinded the dismissal, but he did concede that the department never made a written record rescinding the dismissal, because they did not have any references to "dismissal" in Mr. Letona's personnel file. Continuing, Mr. Green explained that the department questioned whether it was appropriate under A.R.S. §38-1106(J) to make a reduction in back pay since Mr. Letona earned income at alternative employment and the fact that the department reversed his dismissal, which was the focus of the hearing and the hearing officer recommended that Mr. Letona's back pay be reduced by the amount Mr. Letona earned at his

alternative employment. Mr. Green added that all the other back pay and leave was issued and restored to Mr. Letona.

Kevin Donnellan asked when Mr. Letona received his back pay and leave. Mr. Green stated that it came immediately after the Board adopted the first hearing officer's recommendations.

Continuing, Mr. Green stated that the Board cannot reverse the dismissal because it has already been reversed and there is nothing left for the department to do and agreed with the second hearing officer's recommendation that the dismissal was replaced with an 80-hour suspension, which is not within the jurisdiction of the Board. However, Mr. Green did not agree with the hearing officer's recommendation regarding retroactive back pay to be determined by DOA because DOA has no legal authority; this authority belongs to the Board, which has already been decided by the Board. Additionally, Mr. Green argued that the insurance premium payments that Mr. Letona has asked for is not money Mr. Letona would have received even if he would have been employed by the department because the insurance money goes directly to the insurance company to cover the cost of premiums. At the hearing, it was disclosed that Mr. Letona had no medical costs as the result of not having medical insurance during the time he was not working for the department; therefore, giving Mr. Letona insurance money would give him a windfall.

Joe Beers asked if the department rehired Mr. Letona for the purpose of dismissing him correctly. Mr. Green stated that the department needed to give Mr. Letona his due process rights and the only way to do that was to rehire Mr. Letona, but the decision as to what level of discipline he would receive had not been made at the time of his rehire. As for the request of finding no just cause for the dismissal, Mr. Green stated that it is inappropriate and that the department did have just cause for the dismissal, but the department chose not to do it. Mr. Beers inquired as to any insurance costs Mr. Letona may have had during the time of his unemployment. Mr. Green stated that he did not.

Chad Kirkpatrick requested confirmation that there were no out-of-pocket medical expenses. Mr. Green stated that he did not. Mr. Kirkpatrick asked for clarification that there was no dismissal because it is not on Mr. Letona's employment record, but opposing counsel has stated the dismissal is still on the record and the fact that the department never issued a letter stating Mr. Letona was suspended and not dismissed. Mr. Kirkpatrick continued by asking if this could be solved by the department issuing a letter clarifying that Mr. Letona was given a suspension and not dismissal. Mr. Green stated that the department could issue a letter stating his dismissal was reversed.

Kevin Donnellan inquired to whether Mr. Letona's seniority date has been resolved and if Mr. Letona has been given proof. Mr. Green stated that it has been corrected and Mr. Letona can check in the system.

Joe Beers asked for confirmation that Mr. Letona received his prior seniority or does the system reflect accuracy as a new hire. Mr. Green stated that his record is accurate as if Mr. Letona never left service.

Mark Ziska inquired as to the evidence given based on the Board's April 11, 2017 order, which asked for evidence of the rescission of the dismissal by the department before a ruling can be made. Mr. Green stated that a hearing was set, but prior to the beginning of the hearing in discussion with the parties, the hearing officer determined that moving forward with a hearing was not necessary because Ms. McDaniel admitted that there was nothing left for the department to do and the dismissal had been rescinded. Mr. Ziska asked Ms. McDaniel if there is evidence of the rescission. Ms. McDaniel stated that there is not, but disagreed with Mr. Green that there was no hearing, which included extensive legal discussion and the hearing officer asked Mr. Green for evidence of the rescission of the dismissal and Mr. Green stated that he did not have any; so moving on to the second issue, the hearing officer stated that if there was no cause then no just cause can be found and Ms. McDaniel admitted that there was no need to continue with the hearing because Mr. Green did not have an evidence of the reversal of the dismissal.

Kevin Donnellan inquired as to whether Ms. McDaniel is in opposition of a letter from the department to be placed in Mr. Letona's personnel file as evidence of the rescission of the dismissal and minus a letter wondered why Mr. Letona's reinstatement, paid back pay and restored benefits is not evidence enough of the rescission of the dismissal. Ms. McDaniel stated that in her many years of experience, this is the first time the department has reinstated one of her clients without reversing the dismissal and the dismissal is still on record with the Board as well as with the Superior Court and his personnel file needs to be cleaned up. As it stands, the department has imposed two separate disciplinary actions for one event. Furthermore, if the department places a letter in Mr. Letona's file, it still does not negate the fact that the dismissal still stands until the Board decides or the Superior Court decides. Ms. McDaniel asked the Board to make an order now and finish the case, because the department cannot undo the Board's order. Continuing, Ms. McDaniel stated that the department sent a memo to DOA so that Mr. Letona's seniority could be restored by stating that the Board reversed the dismissal, but that is not what happened and asked if what DOA has done is even valid. If the Board doesn't reverse the dismissal, then the department could go back to DOA and state that the Board doesn't have jurisdiction and withdraw their memo and then Mr. Letona is back where he was two years ago.

Joe Beers asked if Mr. Letona had any insurance coverage during the time he was not employed by the department. Ms. McDaniel stated that he did not have medical insurance and he did not have any medical expenses.

Mr. Green rebutted that he never said there was no evidence of the rescission, but the evidence, as told to the hearing officer, is in the personnel file, the records in the HRIS

system, as well as a witness Mr. Green had brought to testify at the hearing regarding actions that had been taken to reverse the dismissal, but did state that there was no letter stating that the dismissal had been rescinded. As far as the course of action taken by the department to get Mr. Letona's seniority taken care of by DOA, there were emails sent and Mr. Green stated that he still has those emails and if the Board would like he would produce them to the Board.

Ms. McDaniel stated that Exhibit 2 to her objections is what Mr. Green told her that he sent to DOA. Mr. Green stated that it is not true.

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

"I move we adopt the hearing officer's report and recommendation as our own, except for the recommendation that back pay and benefits be determined by another state entity. I find the appellant's reinstatement to Correction Officer II constitutes a rescission of his December 2015 dismissal. All records should reflect that he was reinstated and, as a result, we reverse any reference to any dismissal as there was no dismissal and no finding of just cause. To clarify our previous order, any references to "dismissal" are to be removed from his file. The action of reinstatement and return voided his termination and thus we reverse any department action of dismissal."

Chad Kirkpatrick asked for clarification as to what the Board was ordering and wanted to ensure that any notion that Mr. Letona was dismissed is stricken from the record with the Department of Corrections, Department of Administration, the Personnel Board and State courts; only that he was suspended. Mr. Ziska stated that is the intent.

Kevin Donnellan stated he would abstain from voting due to his employment with the Department of Administration.

Chad Kirkpatrick seconded the motion. There were yea votes from Mark Ziska and Chad Kirkpatrick and a nay vote from Joe Beers. The motion carried.

The Board then considered scheduling the future Board meetings. Mark Ziska proposed the following motion:

"I move we hold our next regularly scheduled open public meeting of the Board on January 24, 2018 at 11:00 o'clock a.m. at 1740 West Adams Street, Conference Room B, Phoenix, Arizona. I further move we hold an executive session on the same date at the same location at 10:30 a.m."

Chad Kirkpatrick 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 12:06 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, Interim Executive Director  
Arizona State Personnel Board

January 16, 2018  
Date Prepared