

**MINUTES OF PUBLIC MEETING  
FOR THE CORRECTIONS OFFICER RETIREMENT PLAN LOCAL BOARD  
FOR THE SUPERIOR COURT**

A Public Meeting of the Corrections Officer Retirement Plan Local Board for the Superior Court was convened Wednesday, December 4, 2013, at 10:00 a.m., Conference Room 109, Arizona State Courts Building, 1501 West Washington Street, Phoenix, Arizona.

**Board Members Present in Conference Room 109:**

Kevin Kluge, Chair; Phil Hanley, Rob Lubitz, Mark Smalley, Jason Hathcock

**Also Present:**

Annette Corallo, Board Secretary; Leticia Chavez, Recorder; Hannah Auckland, Board Attorney; Court Reporter, Ottmar & Associates, Patrick Schmitt

**Call to Order**

**Approval of the Minutes:**

November 7, 2013, Public Meeting Minutes

November 7, 2013, Executive Session Minutes

November 7, 2013, Transcript of Proceedings – Open Session

November 7, 2013, Transcript of Proceedings – Executive Session

The Chair called for any changes or corrections. Board Member Rob Lubitz noted that his name was misspelled as Robert in the meeting transcripts and should read as Rob.

**MOTION: A motion to approve the November 7, 2013 Public Meeting and Executive Session Minutes and transcripts was made by M. Smalley.** Motion was seconded and passed unanimously; minutes stand approved. **CORP 2013-71**

**Request for Rehearing CORP Local Board for the Superior Court Case No. 1 – Patrick Schmitt v. CORP Local Board for the Superior Court**

This matter is a request for rehearing submitted by Patrick Schmitt, Detention Services Director in Cochise County, on the Board's decision at its meeting on September 4, 2013, that it is not authorized to approve a waiver for Mr. Schmitt to remain in ASRS under A.R.S. §38-891.F because that statute only grants that authority to the Department of Corrections and the Department of Juvenile Corrections.

At its meeting on August 6, 2013, the Board had affirmed that the position Mr. Schmitt holds, Cochise County Detention Services Director, is a CORP designated position. The Board had reviewed the position pursuant to the Employer's July 8, 2013 request for guidance.

At its meeting on September 4, 2013, the Board voted to decline to designate Mr. Schmitt's position as a nondesignated position, as the Board does not have authority to specify a nondesignated position under A.R.S. §38-891.F.

At its meeting on November 7, 2013, the Board voted to set a rehearing in this matter on December 4, 2013, with notice by certified mail to the claimant, Employer and Administrator at least 15 days in advance of the rehearing date.

Mr. Schmitt raised three points of contention in his rehearing request:

- 1) If he is expected to contribute to CORP in the same way that Corrections staff must contribute and abide by the same rules of the CORP as Corrections staff must follow, he should be afforded the same waiver process that they have afforded to them. This is a discriminatory practice.
- 2) If the Local CORP Board lacks authority to make the decision on the waiver process, it is only fair that he be made aware of who does have the authority to make this decision. He would like to be able to present his case to that person/designee/Board, whoever it may be.
- 3) And finally, to clarify a statement in the CORP Board minutes concerning the job description that was posted for the detention services director was notated as a CORP position: while this is true, there was still some confusion as to the certainty of that designation, as he has a job description that does not have that distinction noted on it. He had provided a copy to Ms. Corallo for his waiver hearing. In addition, if it was so clearly designated to be a CORP position, why did a Cochise County Human Resources person enroll him in ASRS upon his New Employee Orientation?

The parties to this proceeding are:

Patrick Schmitt  
This Board  
Cochise County (the Employer)  
Fund Administrator

There are no witnesses in this matter.

No response or opposition was filed to the Board's notices by certified mail, dated October 11, 2013 that the rehearing request would be reviewed and the date of rehearing determined at the Board's meeting on November 7, 2013.

The Board was provided with the record in this matter pursuant to Section C.11, Record of Proceedings, of the Board's Rules of Procedure. The following records were provided to the Board and to Mr. Schmitt:

1. Claims for Relief: Mr. Schmitt's Waiver Request dated August 8, 2013, and his Request for Rehearing dated October 3, 2013
2. Matters Officially Noticed by the Board, including Rulings of the Local Board:
  - Employer Request for CORP Membership Determination and Accompanying Job Description Noting the Position Includes CORP Membership
  - Minutes of Board Meetings on August 6, September 4, and November 7, 2013

- Letter from Board Attorney to Employer dated August 7, 2013
  - Letter from Board Chair to Patrick Schmitt dated September 24, 2013
3. Unprivileged Memoranda or Data: All communication among the parties since receipt of the Employer's request to review the position designation

Statute referenced in Request for Rehearing: A.R.S. §38-891.F.

The Chair verified with the claimant that he received all documents in this case by certified mail dated November 26, 2013. Mr. Schmitt confirmed that he received all documents.

The Chair asked Mr. Schmitt if he would like to present any additional information or evidence for the Board to consider. Mr. Schmitt stated that he did not have additional information or evidence not already provided to the Board.

The Chair asked the Board members if they had any questions for Mr. Schmitt. The Board members did not have questions for Mr. Schmitt at this time.

**MOTION: A motion to go into Executive Session to receive legal advice was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2013-72**

**MOTION: A motion to return to public session was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2013-73**

The Chair addressed the three issues raised by Mr. Schmitt. He informed Mr. Schmitt that while the Board understands Mr. Schmitt would like to be afforded the same waiver process as those employees of the Department of Corrections and the Department of Juvenile Corrections, that is not an issue the Board can resolve as it is bound by current statute. To Mr. Schmitt's point of the Board lacking the authority to make the decision on the waiver process, the Chair clarified that all issues of eligibility fall under the authority of this Board per A.R.S. §38-893.D. Therefore, the Board does have the authority to make a decision on the waiver process. Lastly, the Board addressed Mr. Schmitt's concern about receiving a job description that does not have the designation of CORP or ASRS as the retirement plan for his position. The Chair advised Mr. Schmitt that, while it was an unfortunate mistake on the employer's part, that oversight has no bearing on the case or the Board's decision. The Chair suggested to Mr. Schmitt that he could contact a legislator, the Public Safety Personnel Retirement System (PSPRS) or his employer to explore the possibility of a statute change to give this Board authority to consider a waiver for an employee to remain in ASRS. Board member Jason Hathcock also suggested that Mr. Schmitt work with his employer and PSPRS to determine whether his employer owes some of the balance identified by the PSPRS estimate to restore service credits for his time in ASRS, as it appears the estimate may not have included employer contributions for his ASRS service time.

**MOTION: A motion to affirm the Board's decision on August 6, 2013, that the position Mr. Schmitt holds is a CORP designated position and its decision on September 4, 2013, to decline to designate Mr. Schmitt's position as a nondesignated position, as the Board does not have authority to specify a nondesignated position under A.R.S. §38-891.F., was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2013-74**

## **Consideration of Disability Applications:**

### **A. Disability Application #09-01 – Annual Review Update**

The Board approved Application #09-01 for Ordinary Disability benefits on September 2, 2009. This matter was brought to the Board for an annual review at its November 7, 2013 meeting. The Board was advised the applicant had responded via email that she was having problems obtaining her medical records for the past year. She stated that she relocated to San Diego in September 2012 and returned to Arizona in late August 2013.

The Board voted at the November 7, 2013 meeting to (1) send a letter instructing the applicant to continue to attempt to obtain her medical records for the past year; (2) request that the applicant direct her current Arizona medical provider to request the records from her San Diego provider; and (3) that the Board request the medical records for the past year directly from the San Diego medical provider.

Staff sent certified letters to Applicant #09-01 and her San Diego provider on November 18, 2013. The letter to the applicant was returned by the Post Office on November 22, 2013, with a notice that the forwarding order had expired. Staff sent an email to the applicant on November 22, 2013 to request a current mailing address and resent the letter to her current address. The Board Secretary also advised the Board that the certified letter sent to the San Diego doctor was returned as undeliverable (“Attempted, Not Known”).

No records have been received since the last Board meeting.

The applicant had been asked to provide medical treatment records since September 1, 2012, to assist the Board in determining whether an independent medical reevaluation of the applicant’s condition is necessary.

### **B. Disability Application #11-02 – Annual Review Update**

The Board approved Application #11-02 for Ordinary Disability benefits on September 7, 2011. This matter is brought to the Board for an annual review pursuant to the Board’s decision at its September 5, 2012 meeting that the applicant’s case should be reviewed in one year.

The applicant was asked to provide medical treatment records since September 1, 2012, to assist the Board in determining whether an independent medical reevaluation of the applicant’s condition is necessary. The first request for updated records was made in a letter dated August 22, 2013, and a second request was made in a letter dated October 10, 2013.

At its meeting on November 7, 2013, the Board Attorney advised the Board that it would be in the Board’s best interest to obtain current medical records so an Independent Medical Evaluation (IME) doctor could review the records and provide the Board with an accurate evaluation, should the Board vote to seek a reevaluation of the applicant’s condition. The Board approved a motion to send another certified letter to Applicant #11-02 to request current medical records so the

Board may determine whether a medical reevaluation of her condition is warranted, and to attempt to contact Applicant #11-02 telephonically to obtain the requested records.

The Board Secretary spoke with Applicant #11-02 telephonically on November 18, 2013. The applicant stated she had asked her doctors to send the requested records, after receiving each letter, and was unaware the records were not sent. The applicant stated that she “can’t provide records” and relies on her doctors to send them to the Board. She indicated she will speak to her doctors again.

The applicant also questioned why the Board continues to ask for records and review her case even though it has already been approved.

Another certified letter was sent to Applicant #11-02 on November 18, 2013, to again request the records. The Board Secretary advised her during the telephone call that it was acceptable for her doctors to send records directly to the Board at the address provided in the letter.

On November 27, 2013, the Board office received medical records from the applicant’s doctor. Applicant #11-02 has been advised that the Board will hear this matter again at its meeting on January 7, 2014.

#### C. Disability Application #13-01 – Records and IME Update

The Board received Application #13-01 for Accidental Disability Retirement on August 21, 2013, and at its meeting on September 4, 2013, voted to refer the applicant for an Independent Medical Evaluation upon receipt of complete medical records from the providers listed on the application. At its meeting on November 7, 2013, the Board voted to request medical records from Workers Compensation and postpone the IME until all requested medical records have been received.

All medical and Workers Compensation records were received as of November 15, 2013. The first IME, with a psychologist, has been scheduled on December 5, 2013, and the second IME, with a psychiatrist, has been scheduled on December 19, 2013.

#### **Normal Retirement Benefits:**

The Local Board may consider and vote on the approval of Normal Retirement benefits for the following applications or defer decision to a later date:

- a. Belen Montijo-Vasquez
- b. Dennis P. Praino
- c. Jaime C. Reyes

The Board Secretary noted for the record that the effective retirement date for the three applicants listed was December 1, 2013.

**MOTION: A motion to approve the payment of Normal Retirement benefits to the following applicants in about the following amounts and to note that the effective date of retirement was December 1, 2013, was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2013-75**

Belen Montijo-Vasquez: \$2,475.20  
 Dennis P. Praino: \$2,235.30  
 Jaime C. Reyes: \$3,374.96

**Approval of Meeting Dates for 2014:**

At the last meeting, the Board tabled discussion of the 2014 meeting dates because of a potential conflict with the proposed Wednesday meeting schedule and asked staff to check on room availability on Tuesdays, or Monday if necessary. The meeting room is available on a Tuesday in all months except February and April. The April meeting could be scheduled on a Monday but the only date available in February before the 10<sup>th</sup> of the month is a Wednesday. All meetings are scheduled to begin at 10:00 a.m.:

January 7 <sup>th</sup>	Tuesday
February 5 <sup>th</sup>	Wednesday
March 4 <sup>th</sup>	Tuesday
April 7 <sup>th</sup>	Monday
May 6 <sup>th</sup>	Tuesday
June 3 <sup>rd</sup>	Tuesday
July 8 <sup>th</sup>	Tuesday
August 5 <sup>th</sup>	Tuesday
September 9 <sup>th</sup>	Tuesday
October 7 <sup>th</sup>	Tuesday
November 4 <sup>th</sup>	Tuesday
December 2 <sup>nd</sup>	Tuesday

**MOTION: A motion to approve the proposed Board meeting dates for 2014 was made by P. Hanley. Motion was seconded and passed unanimously. CORP 2013-76**

**CORP Physical Exam Final Letters:**

Luis A. Morales  
 Paul A. Murray

The Board noted, for the record, that physical examination reports for Luis A. Morales and Paul A. Murray were not received within 60 days of receipt of their membership applications and that final letters requesting an examination were sent to these members via certified mail on November 21, 2013.

**Approval of Membership:**

The Local Board may consider and vote on the approval of the following requests for membership or defer decision to a later date:

Anaya, Eduardo	Yuma	10/29/2010
Anderson, Roberta	Mohave	10/21/2013
Aranda, Adrian	Yuma	7/1/2013
Avalos Jr., Jose	Yuma	9/20/2012
Avila, Eduardo	Maricopa	10/21/2013
Bishop, Alisa	Pinal	4/29/2013
Buchanan, Michella	Pima	7/28/2013
Caro, Arturo	Yuma	6/19/2012
Chavez, Ada	Maricopa	11/4/2013
Clever Jr., Cory	Mohave	6/18/2012
Cortez Ruiz, Juan	Yuma	7/9/2012
DeVolder, Marcus	Pima	4/29/2013
Dzezinski, Jennifer	Maricopa	10/21/2013
Francis, Christopher	Pima	9/9/2013
Franco, Jaime	Pima	8/25/2013
Franzmeier, Annie	Maricopa	10/21/2013
Gallego, Nicolas	Pima	4/29/2013
Gil, Angel	Yuma	8/12/2012
Hamiter, Christopher	Gila	1/10/2013
Hawkins, Dustin	Gila	4/12/2012
Kewin, Sean	Pima	11/4/2013
Kinney, Alice	Gila	9/9/2013
Kittle, Kevin	Gila	11/7/2011
Kumparak, Andressa	Gila	6/24/2013
Lanier, Vonetta	Maricopa	10/21/2013
Longoria, Lenny	Yuma	4/25/2011
Lovato, Christine	Gila	2/14/2011
Lowe, Daniel	Gila	8/19/2013
Lucero, Liza	Yuma	10/29/2010
Manista, Alison	Gila	10/15/2012
Martin, Brian	Gila	8/13/2012
Mata Vega, Nora	Gila	8/16/2011
Mejia, Angela	Pinal	5/6/2013

Miranda-Browning, Cynthia	Yuma	10/28/2013
Morales, Luis	Apache	8/25/2013
Murray, Paul	Yavapai	9/1/2013
Ohlmaier, Francisco	Yuma	7/15/2013
Ortega, Jessica	Gila	5/23/2011
Palmer, David	Gila	9/27/2012
Payne, Teresa	Pinal	6/20/2011
Philpot, Dustin	Gila	11/26/2012
Pilcher, Elizabeth	Pima	5/19/2013
Pisano, Erika	Gila	1/31/2011
Preston, Monte	Yuma	10/19/2009
Reyes, Martin	Yuma	8/4/2008
Rocha Leon, Andres	Maricopa	10/14/2013
Rodriguez, Juan	Yuma	1/11/2010
Rodriguez, Maria	Yuma	8/27/2012
Rosales, Humberto	Maricopa	10/14/2013
Rutherford, Douglas	Gila	6/28/2012
Salazar, Dora	Gila	9/27/2012
Sandoval, Jane	Yuma	9/16/2013
Silvers, Emelle	Gila	11/17/2011
Smith-Walker, Constance	Yuma	6/18/2012
Spier, Gretchen	Gila	10/15/2012
Suhren, Eric	Maricopa	10/14/2013
Vargas, Claudia	Pima	4/29/2013
Willer, Justin	Pinal	6/17/2013

The Board noted, for the record, that the physical examinations for applicants Roberta Anderson, Adrian Aranda, Jose Avalos Jr., Alisa Bishop, Arturo Caro, Cory Clever Jr., Marcus DeVolder, Jennifer Dzezinski, Nicolas Gallego, Angel Gil, Christopher Hamiter, Dustin Hawkins, Sean Kewin, Lenny Longoria, Francisco Ohlmaier, Teresa Payne, Maria Rodriguez, Humberto Rosales, and Emelle Silvers identified a physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.

**MOTION: A motion to approve the 58 named employees requesting membership into CORP was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2013-77**

**Selection of Board Attorney:**

The current contract extension with Michael Anthony to provide professional legal services to the Board ends on January 31, 2014. A separate contract entered into with Hannah Auckland after her move to the Grasso Law Firm also ends on January 31, 2014. The current contract rate is \$175.00 per hour for either Mr. Anthony or Ms. Auckland, or \$175 per hour total if both attend a meeting.

With Mr. Anthony and Ms. Auckland now at different firms, the state procurement rules do not allow the Board to approve extension of the existing contracts. At its meeting on October 9, 2013, the Board directed staff to solicit three bids for legal services in order to negotiate one or more new contracts for services.

Three bids were received in response to the solicitation and provided in full for the Board's review. After review of the three bids, the Board agreed to contract with Hannah Auckland of Grasso Law Firm to provide legal counsel.

**MOTION: A motion to instruct the Board Secretary to contract with Grasso Law Firm to provide legal counsel to the Board for a contract term beginning February 1, 2014, was made by R. Lubitz. Motion was seconded and passed unanimously. CORP 2013-78**

**Call to Public:**

No members of the public addressed the Board.

The meeting was adjourned at 11:10 a.m.

Transcribed December 4, 2013