

**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 Tuesday, September 9, 2014, 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; Molly Gonzalez, Recorder; Hannah Auckland, Board Attorney; Patrick Schmitt; Julie Morales, Human Resources Director for Cochise County (via conference call); Wendy De La Cruz, Benefits Coordinator for Cochise County Human Resources (via conference call); Randy Garo, Applicant #14-01 (via conference call)

**Call to Order:**

**Approval of the Minutes:**

August 5, 2014, Public Meeting Minutes

**MOTION: A motion to approve the August 5, 2014 Public Meeting Minutes was made by P. Hanley.** Motion was seconded and passed unanimously; minutes stand approved. **CORP 2014-52**

**Hearing: CORP Local Board for the Superior Court Case No. 2 Patrick Schmitt v. CORP Local Board for the Superior Court**

The Local Board may vote to go into Executive Session to receive legal advice pursuant to A.R.S. 38-431.03(A)(3).

This matter is:

CORP LOCAL BOARD FOR THE SUPERIOR COURT CASE NO. 2

PATRICK SCHMITT V. CORP LOCAL BOARD FOR THE SUPERIOR COURT

Patrick Schmitt, Detention Services Division Director in Cochise County, submitted a request for waiver to return to the Arizona State Retirement System (ASRS) pursuant to A.R.S. §38-891(F) as of his hire date (October 8, 2012).

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 are provided:

1. Claim for Relief: Waiver Request dated June 3, 2014

2. Unprivileged Memoranda or Data: All communication among the parties since receipt of the Claimant's request to return to the Arizona State Retirement System dated June 3, 2014
3. Signed waiver of the 90-day hearing requirement stated in A.R.S. §38-893(D)(2), to allow the Board to hear this matter after the effective date of the amendments to A.R.S. §38-891(F) on July 24, 2014, and at a meeting where sufficient Board members can be present

Notice was given by certified mail to the claimant, Employer and Administrator at least 15 days in advance of this hearing date.

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 on June 23, 2014, and August 26, 2014, that the waiver request would be heard at the Board's meeting on September 9, 2014.

Statute amendments referenced in the request for hearing:

A.R.S. §38-891(F):

F. The local board of the state department of corrections, ~~or~~ the local board of the department of juvenile corrections OR THE LOCAL BOARD OF A COUNTY, CITY OR TOWN THAT OPERATES DETENTION FACILITIES may specify a designated position within the department OR FACILITY as a nondesignated position if the position is filled by an employee who has at least five years of credited service under the Arizona state retirement system and who makes a written request to the local board to specify the position as a nondesignated position within ninety days of accepting the position. On the employee leaving the position, the position reverts to a designated position.

Summary of Prior Case:

For purposes of this hearing, the Board was provided with documents as background on the prior matters considered by the Board as related to Mr. Schmitt's pending request for waiver.

At its meeting on August 6, 2013, the Board affirmed that the position Mr. Schmitt holds, Cochise County Detention Services Director, is a CORP designated position. The Board took this action after receiving a request from Mr. Schmitt's employer for a determination on whether or not the position is a CORP designated position.

On August 8, 2013, Mr. Schmitt filed a request for hearing on his request that the Board approve a waiver to allow him to remain in ASRS pursuant to A.R.S. §38-891(F). 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 did not have authority to specify a nondesignated position under A.R.S. §38-891(F).

On October 3, 2013, Mr. Schmitt filed a request for rehearing on his request that the Board approve a waiver to allow him to remain in ASRS pursuant to A.R.S. §38-891(F). 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?”

At its meeting on December 4, 2013, a rehearing was conducted and the Board voted to affirm its 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 under A.R.S. §38-891(F).

The following documents were provided to the Board as documentation of the Board decisions in the prior case:

1. Letter dated August 7, 2013, from Michael P. Anthony, Board Attorney, to Wendy De La Cruz, Benefits Coordinator for Cochise County Human Resources, documenting the Board’s decision that Mr. Schmitt holds a CORP designated position.
2. Joinder Agreement between the Administrative Office of the Courts and the Arizona Corrections Officer Retirement Plan
3. Minutes of the Board’s Public Meeting – December 4, 2013
4. Open Session Transcript – Board meeting on December 4, 2013
5. Executive Session Transcript – Board meeting on December 4, 2013 (Confidential)
6. Executive Session Minutes – Board meeting on December 4, 2013 (Confidential)

The Chair called on Mr. Schmitt, who was in attendance at the meeting, to verify that he did in fact receive documentation from the Local Board Office of this hearing and all of the supporting documentation. Mr. Schmitt verified that he did receive all appropriate documentation.

Mr. Schmitt addressed the Board. He advised that upon working with his local legislator he was successful in amending Senate Bill 1284 as it related to the authority of Local Boards to designate positions. Due to the passage of this amendment, he requests that this Board designate his current position as a nondesignated CORP position so that he may participate in ASRS retirement.

Wendy De La Cruz, Benefits Coordinator for Cochise County Human Resources, asked if the amendment in Senate Bill 1284 would also allow the Board to determine the effective date of ASRS participation as Mr. Schmitt's hire date or the date the bill was signed into law. The Board Attorney stated that there was no language in the bill that would allow the Board to make a retroactive application of the change, so any decision made by the Board would be from the date the bill was signed into law.

The Chair advised Mr. Schmitt that he believes the language in the bill does not apply to this Board, the Local Board of the Judiciary. Board member Jason Hathcock stated that he felt the amendment to the bill does apply to this Board but that the Board should seek legal advice from the Board Attorney.

**MOTION: A motion to enter Executive Session to receive legal advice was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2014-53**

**MOTION: A motion to return to open session was made by J. Hathcock.** Motion was seconded and passed unanimously. **CORP 2014-54**

The Board Chair advised Mr. Schmitt that after review of the amended statute, the Board Attorney advised the Board that the language still does not allow this Board to designate his position as a nondesignated CORP position. He reiterated that this Board is the Local Board of the Judiciary and it oversees the Superior Court positions, which are state court positions. The language in subsection F of the amended statute does not reference the Local Board of the Judiciary as it does in subsection G. The Chair advised Mr. Schmitt to seek legal advice regarding the matter of the language in the statute and to work with his local legislator and the Public Safety Personnel Retirement System Board to obtain guidance.

The Chair also advised Mr. Schmitt that the current language would not allow the Board to designate his position retroactively. The Board Attorney suggested Mr. Schmitt seek legal advice regarding this matter.

Mr. Schmitt asked whether another hearing before this Board would be required if he was successful in again amending the statute to include the correct wording. The Board Attorney stated that the Board could only make decisions on what is presented today. However, the Chair stated that Mr. Schmitt would most likely need to file another request with the Board for consideration.

The Board had no further questions for Mr. Schmitt and Mr. Schmitt had no further questions for the Board.

**MOTION: A motion to affirm the Board's September 4, 2013 and December 4, 2013 decisions 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 M. Smalley. Motion was seconded and passed unanimously. CORP 2014-55**

**Consideration of Disability Application:**

The Local Board may vote to go into Executive Session to discuss medical documentation and to receive legal advice for the following Disability Application pursuant to A.R.S. §38-431.03(A)(2 & 3).

**#14-01 – IME Review; Decision on Benefits**

The Board received Application #14-01 for Ordinary Disability Retirement on April 16, 2014, and voted at its May 6, 2014 meeting to send Applicant #14-01 for an Independent Medical Evaluation (IME).

The Board obtained all known medical reports of findings and treatment from the doctors identified in the application. All medical records were provided to the IME doctor before the applicant's examination. The applicant's physical exam dated November 15, 2007 did not indicate any pre-existing conditions.

The applicant was notified via certified letter that the Board would consider the application at this meeting and of the applicant's right to attend. The applicant also initialed the Waiver of Confidentiality provision, to allow discussion of the medical condition in open public meeting.

Dr. Mark E. Frankel, a Board Certified Orthopedic Surgeon, performed an IME of the applicant on July 22, 2014. The completed IME report was received by the Local Board.

Dr. Frankel completed the Ordinary Disability Questionnaire (Form C5-LB-O) and answered the four questions posed by the Board in the letter dated July 1, 2014, referring the applicant for the IME. The Board Secretary advised that the Local Board will need to make a determination on eligibility based on the IME. Any motion to approve or disapprove the application should include a reference to the IME upon which the determination is based. The Board can consider any medical evidence that the applicant may want to provide; however, the statutes are clear that a determination of disability shall be based on the IME. Material conflicts in medical evidence must be resolved by findings of the Board. Disability determinations by the State Comp Fund or other workers' compensation bodies are not binding on the Local Board.

Board member J. Hathcock noted for the record that, in response to the questions posed by the Board, Dr. Frankel stated:

- (1) Does Ms. Garo have a physical condition that totally and permanently prevents her from performing a reasonable range of duties within the employee's department?  
Answer: "In my opinion, Ms. Garo does have a physical condition that totally and permanently prevents her from performing a reasonable range of duties within her department."

(2) Does Ms. Garo have a mental condition that totally and permanently prevents her from engaging in any substantial gainful activity?

Answer: "I have no basis for commenting on any question about her mental health."

(3) If you conclude that Ms. Garo does have a disabling condition or injury, and you believe the condition or injury may improve with treatment, please detail available treatment options and their likely outcome.

Answer: "Ms. Garo will have follow-up with the neurosurgeon and repeat MRI in six months. If the MRI shows conclusive evidence, as well as the clinical exam at that time, she may be improved with back surgery."

(4) In your opinion, does the claimant's disability result from a physical or mental condition or injury which predates September 26, 2008?

Answer: "In my opinion, the disability does occur from a condition or injury postdating September 26, 2008."

Board Member Jason Hathcock stated that based on Dr. Frankel's responses he feels the applicant does meet the requirements for Ordinary Disability

**MOTION: A motion to approve Ordinary Disability Retirement benefits for Applicant #14-01 (Randy Garo) in about the amount of \$402.61 effective October 1, 2014, based on the findings of the Independent Medical Evaluation conducted by Dr. Mark Frankel for the Local Board as set forth in his report dated July 22, 2014, and to review the matter again in one year pursuant to A.R.S. §38-886.01.D., was made by R. Lubitz. Motion was seconded and passed unanimously. CORP 2014-56**

#### **Approval of Normal Retirements:**

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:

Gilbert Contreras

Carrie J. Hodap

Steven R. Lessard

Kristen A. Padilla

Sharon K. Pommer

Debra L. Weirman (Reverse DROP)

The Board Secretary noted for the record that the effective CORP retirement date for applicants Gilbert Contreras and Debra Weirman was August 1, 2014. The effective CORP retirement date for all other applicants is September 1, 2014.

Additional documents related to Gilbert Contreras' retirement and subsequent return to work in a different position were provided for the Board's review. Staff at the Public Safety Personnel Retirement System (PSPRS) contacted the Board Secretary after a call with him that raised concerns he did not terminate employment in the CORP position. Mr. Contreras and Mary Tinklenberg, Human Resources Manager in Coconino County, were asked to provide documentation that he terminated from the CORP position and was subsequently rehired for a different position. Tara Davis with PSPRS indicated the Board will need to determine if his

termination and rehiring is a return to work situation. Mary Tinklenberg sent confirmation to the Board that his accrued vacation time in the CORP position was paid and submitted a Notice of Retiree Return to Work to be considered at this meeting.

**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 for Gilbert Contreras and Debra Weirman was August 1, 2014, was made by P. Hanley. Motion was seconded and passed unanimously. CORP 2014-57**

Gilbert Contreras:	\$3,730.00 effective August 1, 2014
Carrie J. Hodap:	\$3,178.25 effective September 1, 2014
Steven R. Lessard:	\$3,855.98 effective September 1, 2014
Kristen A. Padilla:	\$2,257.99 effective September 1, 2014
Sharon K. Pommer:	\$2,587.94 effective September 1, 2014
Debra L. Weirman:	\$3,277.71 effective August 1, 2014 (Reverse DROP Amount: \$161,264.24)

#### **Review of Notices of Retiree Return to Work**

##### A. Gilbert Contreras

The Board received a Notice of Retiree Return to Work from Coconino County for Gilbert Contreras. The form indicates that Mr. Contreras retired from the Coconino County Superior Court under CORP effective August 1, 2014, and returned to work for the Coconino County Superior Court on July 7, 2014, as a part-time Youth Care Worker III – Alternative Programming. Mr. Contreras does not hold a CORP designated position so his employer is not responsible for paying the CORP alternate contribution rate on his behalf.

**MOTION: A motion that the Board received a Notice of Return to Work for Gilbert Contreras and finds that (1) Mr. Contreras is eligible to continue to receive a CORP pension because the part-time status of his position does not qualify the position for designation as a CORP position and (2) Mr. Contreras' employer (Coconino County) is not responsible for paying the CORP alternate contribution rate on his behalf was made by M. Smalley. Motion was seconded and passed unanimously. CORP 2014-58**

##### B. Stan Rome

The Board received a Notice of Retiree Return to Work from Pima County for Stan L. Rome. The form indicates that Mr. Rome retired from the Pima County Superior Court under CORP effective July 1, 2014, and returned to work for the Pima County Superior Court on July 30, 2014, as an Intermittent Juvenile Detention Officer. Mr. Rome does not hold a CORP designated position so his employer is not responsible for paying the CORP alternate contribution rate on his behalf.

**MOTION: A motion that the Board received a Notice of Return to Work for Stan L. Rome and finds that (1) Mr. Rome is eligible to continue to receive a CORP pension and (2) Mr. Rome's employer (Pima County) is not responsible for paying the CORP alternate contribution rate on his behalf was made by R. Lubitz. Motion was seconded and passed unanimously. CORP 2014-59**

## **Acknowledgement of CORP Physical Pre-Existing Conditions**

The Chair noted, for the record, that the physical examination report for member Julio Flores identified one or more pre-existing conditions. The Board approved Mr. Flores for CORP membership at a prior meeting. His physical examination report was received after a 60-day notice was sent to him.

## **Status Update: Membership Audit**

At the Board's August 5, 2014 meeting, the Board Secretary advised that the members whose exams could not be recovered from Concentra in Maricopa, Coconino, Gila and Navajo counties had received a letter explaining the importance of having an exam on file. All pending exam reports for officers in Gila and Navajo counties have now been received. Staff continues to work with Concentra and Pinal County to recover exam reports for Pinal County. To ensure the Local Board Office continues to receive all exams and membership forms, the Board Secretary suggested the Board approve an annual audit of the membership by requesting an active member list from PSPRS to complete the audit.

**MOTION: A motion to direct the Board Secretary to initiate an annual audit by requesting an active member list from PSPRS by October 31, 2014, was made by J. Hathcock. Motion was seconded and passed unanimously. CORP 2014-60**

## **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:

Kathryn Adams	Yavapai	8/4/2014
Rodrigo Arce	Maricopa	9/28/2009
Krystle Barela	Pima	7/28/2014
Wade Brannon	Pinal	7/21/2014
Ariel Campbell	Maricopa	7/14/2014
Karla Fortenberry	Graham	6/21/2014
Stacy Fradette	Yavapai	8/3/2014
Amy Ganz	Maricopa	7/14/2008
Ashley Harmon	Pinal	7/21/2014
Kevin Kittle	Maricopa	8/18/2014
Rebecca Klaver	Pinal	10/22/2012
Brian Kramer	Pinal	6/17/2013
Christopher Marez	Maricopa	7/29/2013
Mary McDowell	Maricopa	8/18/2014
Meghan McEuen	Maricopa	1/10/2011
Ryan O'Toole	Maricopa	7/21/2014
Joseph Pallo	Maricopa	4/7/2008
Kristi Slade	Maricopa	8/27/2007
Chad Stears	Navajo	6/23/2014
Joshua White	Yavapai	8/4/2014
Clara Williams	Pinal	7/21/2014

**MOTION:** A motion to approve the 22 applicants listed on the agenda for this meeting for membership in CORP pursuant to A.R.S. § 38-893.D and to note for the record that the physical examinations for applicants Krystle Barela, Wade Brannon, Stacy Fradette, Kevin Kittle, Rebecca Klaver, Meghan McEuen, Joseph Pallo, Joshua White and Clara Williams identified a physical or mental condition or injury that existed or occurred before the member's date of membership in the plan was made by J. Hathcock. Motion was seconded and passed unanimously. **CORP 2014-64**

**Call to the Public:**

No members of the public addressed the Board.

The meeting was adjourned at 11:01 a.m.

Transcribed September 9, 2014