

Bureau of Personnel Minutes of Public Hearing to Adopt Rules

The Career Service Commission convened at 8:30 a.m. on Wednesday, May 25, 2011 in BOP Training Room #B1 in the Becker Hanson Building, Pierre, South Dakota.

The meeting was held to conduct a public hearing to consider the Proposed amendments to rules: §§55:01:01:01, 55:01:07:02.02, 55:01:08:02, 55:01:12:05, 55:01:13:04.01, 55:01:15.01:01, 55:01:15.01:02, 55:01:22:01, 55:01:22:02, 55:01:22:02.04, and 55:01:22:19.

Career Service Commission members present: Gordon Garnos, Judy Greff, Barbara Christianson, Dawn Morris.

Bureau of Personnel staff in attendance: Jeff Bloomberg, Kevin Forsch, Ellen Zeller, Linda Roseland

Others present: Megan Luther with the Argus Leader, Corey Landeen with SDSEO, Gerald McGillivray.

Written Testimony

Prior to the hearing, the Bureau of Personnel received two letters with comments from interested parties. The letters are from Carmen Hacht of the United Food & Commercial Workers Local Union 222 and state employee Roger Bohls.

Carmen Hacht wrote on behalf of the HSC Union members with concerns on §55:01:12:05 (16), "The employee has intentionally falsified a state record or document." Their concern is the word "intentionally", which they believe leaves no room for human error. This proposed rule amendment has been withdrawn.

Another concern of the UFCW Union is §55:01:13:04.01, which repeals the rule allowing an appeal of a layoff. The HSC Union members feel that it is their right to have knowledge as to why they are being laid off. Their third concern is with §55:01:22:19, which states that an appointing authority is not required to give prior notice of a furlough to an employee. They feel this is disrespect towards the employee and could cause financial burdens for them.

Roger Bohls, a state employee also wrote with concerns about §55:01:12:05, which takes away the word 'intentionally' from the sentence on falsifying a state record or document. This proposed rule amendment has been withdrawn. He also opposes rule §55:01:13:04.01, which eliminates the employee's right to appeal a layoff.

Oral Testimony

Jeff Bloomberg with the Bureau of Personnel spoke about the process for adopting the rules. The Notice was published in three newspapers, and distributed to interested parties with copies of the proposed changes provided to anyone asking for them.

The Bureau of Personnel withdrew one of the proposed changes. Mr. Bloomberg told the group that the change to section 16 of rule §55:01:12:05 which takes away the word 'intentionally' from the sentence on falsifying a state record or document has been withdrawn. Both of the letters received from interested parties prior to the hearing had concerns about this change.

Kevin Forsch of the Bureau of Personnel then spoke about the proposed amendments to the rules and the reasons for each change. His explanations are below:

§55:01:01:01 and §55:01:08:02 clarify terms and outdated terminology. On §55:01:07:02.02, BOP worked with the department of vocational rehabilitation to apply their standard when granting disability preference for the purpose of requiring that an applicant be interviewed. It requires that the disability preference be renewed every five years. §55:01:13:04.01, §55:01:15.01:01, and §55:01:15.01:02 clarify and repeal the rules used in a layoff. Mr. Forsch explained that a safety net would still exist for employees, because an agency could not lay an employee off unless the Bureau of Personnel approves the request and the reason for the layoff. Also, in a situation where the legislature abolishes funds, it should not be up to the Career Service Commission to decide if a position should be funded or not.

Mr. Forsch spoke about §55:01:22:19, which states that prior notice is not required in the case of a furlough. He noted that a furlough would likely be used in the case of a flood or tornado, etc., where the work site is no longer available, but it is expected that the employee would eventually come back to work. §55:01:22:01, §55:01:22:02 and §55:01:22:02.04 update terminology and the allowed uses of leave.

Corey Landeen with SDSEO spoke in opposition of §55:01:07:02.02, saying that he feels it creates an additional burden. He also opposes the changes to 55:01:13:04.01, 55:01:15.01:01 and 55:01:15.01:02, which eliminate the employee's right to appeal a layoff. He believes it removes the employer's obligation to prove that a layoff was necessary. Mr. Landeen thought the changes to §55:01:01:01, which adds stepbrother and stepsister to the definition of immediate family, were positive. He also opposed the changes to §55:01:22:19, which state that an emergency furlough does not require prior notice.

Gerald McGillivray, a DENR employee also spoke to oppose the change to the rule allowing an appeal for a layoff.

Kevin Forsch spoke a last time to clarify some of the questions raised.

The Commission reviewed the updates and the changes. After some consideration of whether they would make their decision today or at a later meeting, they decided to take a vote. Commissioner Christianson moved to accept the rules as presented by the Bureau of Personnel and Commissioner Morris seconded the motion. Commissioner Garnos moved to strike proposed amendment §55:01:13:04.01. The motion died for the lack of a second. There being no further discussion, Commissioners Christianson, Morris and Greff voted to adopt the proposed rules.

Respectfully submitted,

Linda Roseland
Bureau of Personnel

Adjournment: 11:10