

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 OSHR _____

CARDINAL INNOVATIONS
HEALTHCARE SOLUTIONS,

Petitioner,

v.

OFFICE OF STATE HUMAN RESOURCES,

Respondent.

**PETITION FOR CONTESTED CASE
HEARING**

HEARING REQUESTED

Pursuant to N.C. Gen. Stat. § 150B-23, Cardinal Innovations Healthcare Solutions (“Cardinal Innovations”) files this Petition for Contested Case Hearing to contest the decision of the Office of State Human Resources (“OSHR”) related to the salary range for an Area Director/CEO and OSHR’s determination that Cardinal Innovations is out of compliance with that range, which decision was communicated to Cardinal Innovations by letter dated August 10, 2017, and signed by Lou Ann Phillips, State Human Resources Deputy Director. In support of this Petition, Cardinal Innovations alleges the following:

PARTIES AND JURISDICTION

1. Petitioner Cardinal Innovations is the United States’ largest specialty health plan, serving more than 850,000 individuals eligible for Medicaid or State-funded services with complex needs, including individuals with mental illness, substance use disorders, and/or intellectual or developmental disabilities. Cardinal Innovations pioneered a unique managed care model in North Carolina that relies on strong community partnerships with providers and stakeholders to provide person-centered care in line with clinical best practices. This model has led to better outcomes for Cardinal Innovations’ members at a lower overall cost, and it has been adopted by similar organizations throughout the State and country.

2. Cardinal Innovations is organized as the local management entity / managed care organization (“LME/MCO”) through which Medicaid and State-funded mental health, intellectual and developmental disabilities, and substance use disorder services are overseen and paid for on behalf of enrollees in Cardinal Innovations’ service area, comprising Alamance, Cabarrus, Caswell, Chatham, Davidson, Davie, Forsyth, Franklin, Granville, Halifax, Mecklenburg, Orange, Person, Rockingham, Rowan, Stanly, Stokes, Union, Vance, and Warren Counties. An “area authority” within the meaning of N.C. Gen. Stat. § 122C-3(1), Cardinal Innovations is deemed “a local political subdivision of the State,” *id.* § 122C-116(a). Cardinal Innovations’ principal office is located in Mecklenburg County.

3. Cardinal Innovations operates as a Prepaid Inpatient Health Plan, a type of Managed Care Organization defined in federal Medicaid regulations at 42 C.F.R. § 438.2.

4. Respondent Office of State Human Resources is an agency of the State of North Carolina. OSHR is located in Wake County.

5. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

FACTUAL AND PROCEDURAL BACKGROUND

6. In 2001, the General Assembly enacted reforms to the delivery of State-funded services for mental health, intellectual or developmental disabilities, and substance abuse services. The 2001 reforms created Local Management Entities (“LMEs”), which were local political subdivisions of the State that did not deliver services directly but rather managed a network of providers within a small geographical area. Upon information and belief, in 2001, there were 39 LMEs in North Carolina ranging in size from a single county to a few counties. Through consolidations and mergers, in 2007 there were 30 LMEs across the State.

7. In June 2008, the State Personnel Commission (the “Commission”) met to consider, among other things, establishing for the first time a salary range for the LME Director position. The Commission’s Minutes from that meeting indicate that the Commission approved a salary range, but the Minutes do not reveal what that range is. A copy of the Commission’s June 2008 Minutes is attached as Exhibit A.

8. OSHR did not communicate the 2008 salary range to Cardinal Innovations (then known as PBH) or, upon information and belief, to any other LME.

9. In March 2010, the Office of State Personnel (“OSP”) issued an internal memorandum regarding LME Director salaries. A copy of that memorandum is attached as Exhibit B. OSP notes in the memorandum that, in 2008, it “was asked to look at establishing a salary range for the LME Directors across the state.” In or about 2010, OSP had been asked “once again to look at updating the salary range.” OSP notes that it updated the range using the “same sources and method” as had been used in 2008. Specifically, OSP relied on the “current salaries” and “the comparison of salaries of the CSB’s employees (Community Services Boards) from the state of Virginia.”

10. The salaries paid by the Community Services Boards in Virginia were not and are not appropriate comparisons for Cardinal Innovations.

11. The March 2010 OSP memorandum recommends the following salary range for LME Directors: a minimum of \$105,576, a midpoint of \$146,470, and a maximum of \$187,364. The memorandum also clarifies that “this salary range is for information purposes only” and should not be “used in determining salaries” because “each entity is responsible for setting the salary of their directors.”

12. In June 2010, the Commission met to consider, among other things, a recommendation from OSP to modify the salary range for LME Directors. The Commission’s

Minutes from that meeting indicate that the Commission approved a modification to the prior salary range, but the Minutes do not reveal what the newly approved range was. A copy of the Commission's June 2010 Minutes is attached as Exhibit C.

13. OSHR's first communication of the 2010 salary range to Cardinal Innovations—and, upon information and belief, to any other LME—did not occur until May 2017.

14. In 2011, the General Assembly enacted further reforms to the delivery of publicly funded services for mental health, intellectual or developmental disabilities, and substance abuse. Specifically, the General Assembly directed that LMEs consolidate to form LME/MCOs, which would then begin to manage the delivery of Medicaid-funded services for mental health, intellectual and developmental disabilities, and substance abuse through the operation the State's 1915(b)/(c) Medicaid Waivers. As a result of the 2011 reforms, the functions of the LME/MCOs are substantially different in size, scope, and complexity than the functions of the LMEs. As a further result of the 2011 reforms, the LMEs consolidated into 11 LME/MCOs across the State by 2013. Presently, there are 7 LME/MCOs across the State, with Cardinal Innovations being the largest by number of covered lives and budget.

15. At no time between the 2001 reforms and May 2017 did OSHR communicate any Commission-established salary range for the LME Director position to Cardinal Innovations or, upon information and belief, to the other LMEs or LME/MCOs. At all times relevant to this Petition, the OSHR website for Local Government Classifications lists the position of "Area Authority Director" as having a salary grade of "NG," meaning "No Grade."¹

16. Annually at all times relevant to this Petition, OSHR requested from Cardinal Innovations and all local units of government a salary plan pursuant to N.C. Gen. Stat. § 126-

¹ See N.C. Office of State Human Resources, *LG Class Specs A-K*, <https://oshr.nc.gov/state-employee-resources/local-government-support/LG-class-specs-a-k> (last visited Sept. 18, 2017).

9(b), which allows local units of government to establish their own salary ranges for local government employees “to conform to local financial ability and fiscal policy.” Annually, Cardinal Innovations submitted its salary plan, which lists the salary ranges for all positions at Cardinal Innovations, including the CEO position. OSHR accepted these salary plan submissions from Cardinal Innovations each year, and it has never denied or disapproved of a salary plan submitted by Cardinal Innovations. Cardinal Innovations sets the salary of its CEO within the salary range for the CEO position that it annually submitted to OSHR.

17. On May 30, 2017, OSHR sent a memorandum to Cardinal Innovations in which OSHR informed Cardinal Innovations for the first time of the 2010 salary range and requested specific salary information for Cardinal Innovations’ CEO including, if the CEO salary was above the \$187,364 maximum in the 2010 salary range, “supporting documentation of comparable salaries in comparable operations within the region.” A copy of the May 2017 OSHR memorandum is attached as Exhibit D.

18. Cardinal Innovations provided the requested information on June 30, 2017, including a 2016 executive market compensation study conducted by an independent third-party consultant upon which Cardinal Innovations relied when establishing the CEO salary range and specific CEO salary.

19. On or about August 10, 2017, OSHR published on its website an internal memorandum which states that, “[i]n 2010, OSP (OSHR) updated the [LME Director salary] range per legislative increases since the last revision and now in 2017 we have been asked once again to look at updating the salary range.” The memorandum indicates that OSHR used “the same method” as it had used in 2010 “to determine the new range as of 7/1/2017.” The memorandum states a “recommended” salary range for the LME Directors with a minimum of

\$110,461, a midpoint of \$152,466, and a maximum of \$194,472. A copy of the August 2017 OSHR memorandum is attached as Exhibit E.

20. The August 2017 OSHR memorandum is the first time that OSHR's website has included any specific recommended salary range for the LME Director position.

21. Also on August 10, 2017, OSHR sent a letter to Cardinal Innovations informing Cardinal Innovations that OSHR had "revised the salary range for the Area Director/CEO by applying all legislative adjustments since 2010 to the previously approved maximum of the salary range." OSHR further stated that the "new maximum of the range is \$194,471 effective immediately, although OSHR also indicated that it would be "willing to approve 5% above the maximum as an exception, which is \$204,195." A copy of that August 2017 OSHR letter is attached as Exhibit F.

22. OSHR also determined in the August 2017 letter that Cardinal Innovations' CEO's salary "is above this new rate and, therefore, out of compliance." OSHR directed Cardinal Innovations to "adjust the Area Director/CEO salary accordingly."

23. Cardinal Innovations received approval from the State to leave the State personnel system more than 20 years ago. As a result, Cardinal Innovations' employees, including its CEO, do not receive State benefits and are not part of the State retirement program. Instead, Cardinal Innovations uses market-based employment practices to attract and retain well-qualified staff so that it can continue to deliver high-quality outcomes for members and the State.

24. Cardinal Innovations pays all of its employees, including its CEO (i.e., its area director), an appropriate, market-based salary. Cardinal Innovations determines those salaries by retaining external consultants to conduct a market compensation study every two years, most recently in 2016. That study evaluates salaries paid by public, private, and not-for-profit managed care organizations that are similar to Cardinal Innovations in both size and scope.

25. Cardinal Innovations pays its CEO a salary within the recommended range established by that 2016 compensation study, and within the salary range for the CEO position it submitted annually to OSHR as part of its local salary plan. That range is above \$194,471, and reducing the CEO's salary to \$194,471 (or \$204,195) would result in the CEO being paid substantially below the market rate for a person working in Mecklenburg County who is responsible for a managed care organization with operating revenues exceeding \$825 million, more than 850,000 members, and more than 800 employees.

26. If forced to reduce its CEO's salary to a level well below market rate for the leader of an organization of Cardinal Innovations' size and complexity, Cardinal Innovations would be likely to immediately lose its current CEO and would be at a significant market disadvantage when trying to replace its current CEO with one of similar experience and expertise in the industry, as is necessary to lead Cardinal Innovations. This would result in immediate and irreparable harm to Cardinal Innovations and reduce the organization's ability to fulfill its mission.

PETITION FOR CONTESTED CASE HEARING

27. Cardinal Innovations is aggrieved by OSHR's August 2017 letter in at least three respects: by the arbitrary, inappropriate, and irrationally low salary range; by OSHR's determination that its range should be used in determining salaries; and by OSHR's conclusion that Cardinal Innovations is out of compliance and must remedy that situation by reducing its CEO's salary.

28. Pursuant to N.C. Gen. Stat. § 150B-23, any person aggrieved by an agency decision is entitled to a contested case hearing under the North Carolina Administrative Procedure Act, commenced by filing a petition for a contested case hearing in the Office of Administrative Hearings.

29. OSHR's August 2017 letter constitutes final agency action and a final agency decision.

30. This Petition is filed in a timely manner, and Cardinal Innovations has complied with all conditions precedent.

31. Without waiving any reservation of rights set forth below, Cardinal Innovations contends that OSHR exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and failed to act as required by law or rule.

32. Based on the foregoing, Cardinal Innovations requests a contested case hearing on this Petition because (a) the actions challenged herein violate statutory and constitutional standards, and (b) Cardinal Innovations has been aggrieved by the actions referenced above.

33. Cardinal Innovations expressly reserves the right in any hearing to rely on facts, issues, grounds, arguments and theories not raised at this time.

Respectfully submitted, this the 18th day of September, 2017.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



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Counsel for Cardinal Innovations Healthcare Solutions

Exhibit A

MINUTES

STATE PERSONNEL COMMISSION MEETING 4300 REEDY CREEK ROAD RALEIGH, NORTH CAROLINA

June 19, 2008

The State Personnel Commission (SPC) met on June 19, 2008. Madam Chair Robin Adams Anderson called the meeting to order. Members present were Madam Chair Robin Adams Anderson, Commissioner George I. Allison, Commissioner Axel Lluch, Commissioner Janie Harrell, Commissioner Wayne Peedin, and Commissioner Susan Bailey.

Next, Chair Anderson introduced a new member of the State Personnel Commission, Mr. E. Wayne Peedin. Commission Peedin is the Assistant Director of the North Carolina Division of Veterans Affairs.

Next, Chair Anderson introduced interns working with the Office of State Personnel under the direction of Ms. Nellie Riley, Human Resources Managing Partner. The interns had various assignments with the Special Emphasis Project. Chair Anderson welcomed the interns and thanked them for the important roles that each played in accomplishing their goals.

Ms. Januari McKay is a rising senior at North Carolina Central University. She is working with the Special Emphasis Project, Young Employees Initiatives. She is researching the subject of young employees entering the workforce and their impact. She will focus on how to recruit, retain and motivate young employees in state government. She will analyze focus group data as well as current case government practices in the hiring of young employees.

Ms. Montressa Johnson is a senior at North Carolina Central University. Montressa is co-developing marketing projects for the programs created under the Special Emphasis Project. Specifically, Montressa is working on the marketing of initiatives for the Special Emphasis Project – Females and the Special Emphasis Project – White Males as Diversity Partners. The products that she has created include brochures, newsletters, posters, flyers and power point presentations.

Mr. Anthony Brown is a rising senior at UNC-Greensboro. Anthony is co-developing marketing products for the programs created under the Special Emphasis Project. Specifically he is working on marketing for the initiatives for the Special Emphasis Project – African American Males and Special Emphasis Project – Employees with Disabilities. The products to be created include brochures, newsletters, posters, flyers and power point presentations.

Ms. Elaine Anderson is a rising senior at Elon University. Elaine is reviewing the latest research that was completed on the Older Workers Project. After reviewing the information, she will then refine it as appropriate. A report of the findings and recommendations will include strategies and initiatives for recruiting and retaining older workers in state government.

Ms. Tarryn Simmons is a senior at North Carolina Central University. Tarryn is researching how to recruit, retain and engage people of color in state government. Her research falls under the umbrella of the Special Emphasis Project – People of Color (American Indian, Hispanic/Latino and Asian). Ms. Simmons was not in attendance due to a previously scheduled class.

Next on the agenda was the oral argument component of the docket. The following cases were scheduled and heard for oral argument:

1. **Warren R. Follum v. North Carolina State University**
Petitioner Appearing Pro Se
Attorney for the Respondent

Warren R. Follum
Kimberly D. Potter
2. **Brenda Stanley v. North Carolina Department of Transportation**
Attorney for the Petitioner
Attorney for the Respondent

Charles E. Monteith, Jr.
Allison A. Angell
2. **Dr. Miriam McIntosh v. Durham County Health Department**
Attorney for the Petitioner
Attorney for the Respondent

Bryan E. Wardell
Marie Inserra

Next on the agenda was the business session. Chair Anderson asked if anyone signed up for the Public Hearing. No one signed up for the Public Hearing.

The first item on the business agenda was the approval of the minutes for the April 10, 2008 State Personnel Commission Meeting. There being no corrections to the minutes, the minutes were approved as circulated. **[See Attachments]**

State Personnel Director's Report

The next item on the agenda was the State Personnel Director's Report.

Next, Ms. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, state government classification and pay actions. Ms. Floyd explained why the proposed classifications were being made. Ms. Floyd explained that the Office of State Personnel (OSP) staff had reviewed the proposals and were in agreement. Ms. Floyd asked for an effective date of August 1, 2008. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the state government classifications and pay actions presented to the Commission by Ms. Floyd. Commissioner Bailey made a motion to approve the actions. Commissioner Allison seconded the motion. The motion was made and carried.

Ms. Lynn Freeman, Human Resources Managing Partner, presented to the Commission, for consideration and approval, proposed career banding classification actions. Ms. Freeman explained that the universities were attempting to implement all career banding by the end of June. Ms. Freeman presented to the Commission two new classes that were proposed career banding classifications. Ms. Freeman asked for an effective date of June 1, 2008 for the proposed classification actions. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and a second to approve the career banding classifications as presented by Ms. Freeman. Commissioner Harrell made a motion to approve the proposed career banded classifications. Commissioner Bailey seconded the motion. The motion was made and carried.

Ms. Freeman also presented to the Commission, for consideration and approval, some title changes for the library and agricultural classes in the universities. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and a second to approve the name changes as presented by Ms. Freeman. Commissioner Harrell made a motion to approve the title changes. Commissioner Bailey seconded the motion. The motion was made and carried.

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Ms. Peggy Oliver, Human Resources Policy Administrator, presented to the Commission, for consideration and approval, proposed adoptions and amendments to various rules in Title 25 of the North Carolina Administrative Code to begin the rulemaking process. Ms. Oliver explained the reasons for the proposed actions for the following rules: 25 NCAC 1C.1009 Separation: Payment of Vacation Leave (Amendment); 1D.0517 Leave (Repeal); and 1E.0210 Separation: Payment of Vacation Leave (Amendment). **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the rules to begin the rulemaking process. Commissioner Allison made a motion to approve the rules to begin the rulemaking process. Commissioner Bailey seconded the motion. The motion was made and carried.

Ms. Peggy Oliver presented to the Commission, for consideration and approval, the Hearing Officer's Report on rule 25 NCAC 1H.0629 Appointment to a Position (Adoption). Ms. Oliver gave a brief history of the rule and explained that a public hearing had been held. Ms. Oliver asked that the Commission approve the rule. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the Hearing Officer's Report. Commissioner Allison made a motion to approve the Report. Commissioner Harrell seconded the motion. The motion was made and carried.

Mr. Lynn Summers, Human Resources Partner, presented to the Commission for consideration and approval, the Office of State Personnel's Performance Management Policy. Mr. Summers explained that the policy was written to support the efforts to create within the Office of State Personnel a performance culture. The policy is consistent with the new statewide performance management policy that was approved by the Commission last year. **[See Attachment]**

Chair Anderson asked for a motion and second to approve the Performance Management Policy with its revisions as presented by Mr. Summers. Commissioner Bailey made a motion to approve the Performance Management Policy. Commissioner Peedin seconded the motion. The motion was made and carried.

Next, Mr. Summers explained that he was requesting approval of the Department of Transportation's new Performance Management and Performance Pay Dispute Resolution Policies. Mr. Summers gave the Commission a brief historical summary regarding the major transformational effort by the Department of Transportation. Mr. Summers acknowledged, in the audience, Teresa Ferguson and Patricia Broadhurst, representatives from the Department of Transportation who worked diligently on the performance management policy. Mr. Summers requested an effective date of July 1, 2008 for the top 150 employees (DOT Leadership) and for

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everyone else April 1, 2009. Mr. Summers explained that the remainder of the 14,000 employees would continue to work under the existing policy through the end of the current cycle. **[See Attachment]**

Chair Anderson asked for a motion and second to approve the North Carolina Department of Transportation Performance Pay Dispute Resolution Policy and Procedures. Commissioner Bailey made a motion to approve the policy and procedures. Commissioner Harrell seconded the motion.

Chair Anderson asked if there were any questions. Commission Allison asked, “What was the advantages of changing to metrics?”. Mr. Summers stated that employees performance could be evaluated more objectively as opposed to the subjective approach which results in upwards of 80-90 percent of employees receiving outstanding performance ratings. Mr. Summers stated that it enables employees to see exactly what the results are that they are accountable for producing. Commissioner Peedin asked if this would create an increase or reduction in paperwork on supervisors. Ms. Ferguson, representative of the Department of Transportation said that the agency felt that it would reduce the paperwork. Chair Anderson asked if there were any further questions. There were no further questions. Chair Anderson completed the vote. There was a motion and second to approve the Department of Transportation’s Performance and Pay Dispute Resolution Policy and Procedures. The motion was made and carried.

Ms. Lou Kost, Human Resources Partner, presented to the Commission for consideration and approval the 2007 North Carolina State Employees Workplace Requirements Program for Safety and Health Report. Ms. Kost gave a brief summary of the Report. Ms. Kost recommended the Commission’s approval of the Report. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the North Carolina State Employees Workplace Requirements Program for Safety and Health 2007. Commissioner Bailey made a motion to approve the Report. Commissioner Allison seconded the motion. The motion was made and carried.

Next Mr. Drake Maynard, Human Resources Managing Partner, presented to the Commission, for consideration and approval, a continuous recruitment request from Buncombe County for the public health nurses positions. Mr. Maynard explained that the request meant that the County would continuously recruit for public health nurses and as vacancies occurred they would use those applications for selection. Mr. Maynard recommended the Commission’s approval of the request. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the continuous recruitment request from Buncombe County for the public health nurse positions. Commissioner Bailey made the motion to approve the request. Commissioner Harrell seconded the motion. The motion was made and carried.

Next, Mr. Maynard presented to the Commission, for consideration and approval, the market analysis for the Local Management Entity (LME) Director salaries. Mr. Maynard explained that based on a legislative change from the 2007 Session that required the Office of State Personnel with the approval of the Commission to set up salary ranges for the Directors of local management entities, the Commission had approved the rule and the Administrative Rules Review Commission approved the Commission's rule. This group is part of the group that is taking over part of the activity of area mental health programs. The Office of State Personnel Compensation Program Team performed a compensation study. As a result of the compensation study, the team has provided the salary ranges. Mr. Maynard explained the salary ranges to the Commission. Mr. Maynard recommended the approval of the salary ranges. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the salary ranges for the Local Management Entity (LME) Directors. Commissioner Allison made the motion to approve the recommendation. Commissioner Bailey seconded the motion. The motion was made and carried.

Next, Mr. Maynard presented to the Commission for consideration and approval employee grievance procedures for the North Carolina Community College System and the University of North Carolina at Charlotte. Mr. Maynard recommended that the Commission approve the above employee grievance procedures as being in compliance with the Commission's policies and guidelines. **[See Attachment]**

Chair Anderson asked if there were any questions. There were no questions. Chair Anderson asked for a motion and second to approve the employee grievance procedures for the North Carolina Community College System and the University of North Carolina at Charlotte. Commissioner Bailey made the motion to approve the employee grievance procedures. Commissioner Allison seconded the motion. The motion was made and carried.

Exhibit B



**STATE OF NORTH CAROLINA
OFFICE OF STATE PERSONNEL
1331 MAIL SERVICE CENTER
116 WEST JONES STREET
RALEIGH, NC 27699-1331**

**BEVERLY EAVES PERDUE
GOVERNOR**

**LINDA D. COLEMAN
STATE PERSONNEL DIRECTOR**

March 1, 2010

Memorandum

To: Keita Cannon
Local Government Program Team Lead/HR Consultant

From: Vira Hogan
Classification and Compensation HR Consultant

Re: LME Salary Range

In 2008, OSP was asked to look at establishing a salary range for the LME Directors across the state. We have been asked once again to look at updating the salary range. Since each entity is responsible for setting the salary of their directors, this salary range is for information purposes only – not used in determining salaries.

To be consistent, the same sources and method was used to determine the range. The data used was the current salaries, as well as the comparison of salaries of the CSB's employees (Community Services Boards) from the state of Virginia.

It is being recommended that the salary range for the LME's Directors be as follows:

Minimum	Midpoint	Maximum
\$105,576	\$146,470	\$187,364

Minimum is the lowest salary and the maximum is the highest salary plus 10%. The midpoint is calculated. The current average salary is \$134,402, which has increase by 5% over the past two years.

Please contact me if you have any questions.

cc: Pam Bowling

Exhibit C

**STATE PERSONNEL COMMISSION MEETING
STATE PERSONNEL DEVELOPMENT CENTER
101 WEST PEACE STREET
RALEIGH, NORTH CAROLINA**

The State Personnel Commission (SPC) met on June 17, 2010. Madam Chair Robin Adams Anderson called the meeting to order. Members present were Madam Chair Robin Adams Anderson, Commissioner Susan Bailey, Commissioner K. Dean Shatley, II, Commissioner Axel Lluch, Commissioner Wayne Peedin, Commissioner Alvin G. Ragland, Commissioner Virgie DeVane-Hayes, Commissioner Morris Lee Rascoe and Commissioner Wayne Peedin.

Next on the agenda was the oral argument component of the docket. The following cases were scheduled and heard for oral argument:

- | | | |
|----|---|---------------------------|
| 1. | <u>Haresh Motiroom Advani v. East Carolina University, Division of Finance and Administration, (Facilities Services)</u> | Tab 1 |
| | Attorney for the Petitioner | Ms. Mary-Ann Leon |
| | Attorney for the Respondent | Mr. John P. Scherer, II |
| 2. | <u>Wade Bryan Bulloch v. North Carolina Department of Crime Control and Public Safety, North Carolina Highway Patrol</u> | Tab 2 |
| | Attorney for the Petitioner | Mr. J. Michael McGuinness |
| | Attorney for the Respondent | Ms. Tamara Zmuda |
| 3. | <u>Elsie Hinton v. North Carolina Department of Transportation</u> | Tab 3 |
| | Appearing Pro Se | Ms. Elsie Hinton |
| | Attorney for the Respondent | Ms. Allison A. Angell |
| 4. | <u>Lorraine Smith v. North Carolina Department of Environment and Natural Resources</u> | Tab 4 |
| | Attorney for the Petitioner | Mr. J. David James |
| | Attorney for the Respondent | Mr. Francis W. Crawley |

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Next on the agenda was the business session. Chair Anderson asked if anyone signed up for the Public Hearing. No one signed up for the Public Hearing.

The first item on the business agenda was the approval of the minutes for the April 15, 2010 State Personnel Commission meeting. There being no corrections, the minutes were approved as circulated. **[See Attachment]**

State Personnel Director's Report

The next item on the agenda was the State Personnel Director's Report.

Next, Ms. Pam Bowling, Human Resources Managing Partner, presented to the Commission, for consideration and approval, state classification and pay actions. The Office of State Personnel (OSP) and the Department of Justice conducted a classification and compensation study of the State Bureau of Investigation (SBI) Crime Laboratory which was approved by the State Personnel Commission in February, 2010 and implemented effective April, 2010. As a result of the study, positions in Chemist, Forensic Document Analyst, Forensic Firearm Analyst, Forensic Molecular Geneticist, and Forensic Impressions Analyst class series were transitioned to a new Forensic Scientist class (including Supervisor and Manager levels). A study of the SBI Assistant Director of the Crime Laboratory was requested to be completed after the conclusion of the Forensic Scientist study. This action implements the study of the SBI Assistant Director of the Crime Laboratory class which will bring it in line with levels borne out of the Forensic Scientist study as well as comparable Assistant Director levels within the SBI. The current salary grade is 80 and the proposed salary grade is 82. Ms. Bowling asked that the Commission approve the proposed action with an effective date of June 1, 2010. Commissioner Ragland asked if the action was just changing the range and not the pay. Ms. Bowling stated that it was just changing the grade and not the pay. **[See Attachment]**

Chair Anderson asked if there were any other questions. There being no other questions, Chair Anderson asked for a motion and second to approve the state classification and pay action as presented by Ms. Bowling. Commissioner Ragland made a motion to approve the state classification and pay actions. Commissioner Lluch seconded the motion. The Commission voted. The motion was made and carried.

Next, Mr. Keita Cannon, Human Resources Partner, presented to the Commission, for consideration and approval, salary adjustment revisions for Local Management Entity (LME) Directors. In 2008, the Office of State Personnel was asked to establish an across the state salary range for the LME Directors. A request was recently made for Office of State Personnel to review the established salary range of the LME Directors for a proposed update. To be consistent, the same sources and method was used to determine the range. The analysis was prepared by Ms. Vira Hogan, Human Resources Partner, in the Classification and Compensation

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Section of the Office of State Personnel. Mr. Cannon stated that the current salary range only represents a ten percent above what the range was in 2008. No changes were made in 2009. Currently there are no directors at the maximum salary level. Mr. Cannon asked that the Commission approve the proposed LME salary range with an effective date of July 1, 2010

Chair Anderson asked for a motion and second to approve the salary adjustment revisions for Local Management Entity Directors, as presented by Mr. Cannon, with an effective date of July 1, 2010. Commissioner Bailey made a motion to approve the salary adjustment revisions for the Local Management Entity Directors. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Lynn Floyd, Human Resources Partner, presented to the Commission, for consideration and approval, the Revised Merit-Based Recruitment and Selections Plans for the North Carolina Department of Public Instruction and the Office of State Personnel. Ms. Floyd discussed each plan revision.

Ms. Floyd stated that the proposed plan for the North Carolina Department of Public Instruction met the State policy requirements. Major revisions to the plan encompass incorporating the department's automated application system, incorporating the statutory changes to the Veterans Preference priority and streamlining terminology.

Ms. Floyd stated that the proposed plan for the Office of State Personnel met the State policy requirements. Major revisions to the plan include incorporating the statutory changes to Veterans Preference priority, streamlining terminology and updating internal processes and procedures.

Ms. Floyd explained that staff at the OSP had reviewed the proposed plans and asked that the Commission grant approval for each plan with an effective date of July 1, 2010. **[See Attachment]**

Chair Anderson asked for a motion and second to approve the revised Merit-Based Recruitment and Selection Plan for both the North Carolina Department of Public Instruction and the Office of State Personnel, as presented by Ms. Floyd, with an effective date of July 1, 2010. Commissioner Peedin made a motion to approve the revised Merit-Based Recruitment and Selection Plans. Commissioner Ragland seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Delores Joyner, Rulemaking Coordinator, presented to the Commission, for consideration and approval, the Hearing Officer's Report on the following rules regarding community service leave and recruitment: **Rules 25 NCAC 1E.1601 Purpose; 1E.1602 Definitions; 1E.1604 Uses of Community Service Leave and 1H.0632 Applicant**

Information and Application. Ms. Joyner explained that the Commission had approved the above-mentioned rules to begin the rulemaking process at its February 18, 2010 meeting. The rules were previously noticed in the North Carolina Register and a public hearing was held. Ms. Peggy Oliver, Human Resources Policy Administrator was the Hearing Officer for these rules. However, due to Ms. Oliver's absence, Ms. Joyner presented the Hearing Officer's Report. Ms. Joyner asked that the Commission approve the Hearing Officer's Report so that the rules could be forwarded to the Administrative Rules Review Commission for approval. **[See Attachment]**

Chair Anderson asked if there were any questions. Commissioner Ragland asked if the rules were effective once the Commission approved them. It was explained that once the Commission approved the Hearing Officer's Report, the rules would be forwarded to the Administrative Rules Review Commission for consideration and approval. Once approved by the Administrative Rules Review Commission, the rules would become effective. Chair Anderson asked for a motion and second to approve the Hearing Officer's Report as presented by Ms. Joyner. Commissioner Ragland made a motion to approve the Hearing Officer's Report. Commissioner DeVane-Hayes seconded the motion. The Commission voted. The motion was made and carried.

Next, Mr. Ken Litowsky, Human Resources Partner, presented to the Commission for consideration and approval, the following proposed rule amendments in Title 25 of the North Carolina Administrative Code: **25 NCAC 1J.0614 Definitions** and **1J.0615 Special Provisions** to begin the rulemaking process. Mr. Litowsky explained that the proposed amendments were being made to delete outdated portions of the disciplinary policy involved in the 1995 changes to the policy. Extensions of disciplinary actions were permitted to provide a smooth changeover from a system with no time limits on disciplinary actions to a system with an 18 month time limit. This we are well beyond the 18 months past 1995, this provision is no longer needed and is occasionally confusing. Mr. Litowsky asked the Commission to approve the rules to begin the rulemaking process. **[See Attachment]**

Next, Chair Anderson asked for a motion and second to adopt the disciplinary rules to begin the rulemaking process as presented by Mr. Litowsky. Commissioner Bailey made a motion to adopt the rules. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Pam Bowling, Human Resources Managing Partner, presented to the Commission for consideration and approval, the following proposed rules in Title 25 of the North Carolina Administrative Code: **25 NCAC 1E.1801 Policy, 1E.1802 Definitions, 1E.1803 Recruitment Documentation, 1E.1804 Eligibility Requirements, 1E.1805 Amount of Leave, 1E.1806 Relationship to Other Leave, 1E.1807 Carry-Over and Payment of Leave, 1E.1808 Transfer, 1E.1809 Use of Leave** to begin the rulemaking process. Ms. Bowling explained that incentive leave was being proposed in response to agencies' difficulty in recruiting mid or late

career applicants to positions that have been identified as critical to the agency's mission and for which the agency has documented recruitment difficulty attracting qualified applicants, or in recruiting for executive level or middle management positions. The proposed rules will allow agency management the flexibility to award a one-time accrual up to 20 days (160 hours) of incentive leave to an eligible new employee upon hire. Incentive leave shall be maintained in a separate account from other accrued leave and can only be used as paid leave; therefore, the leave cannot be cashed out and will not be paid out upon separation if not used. Ms. Bowling asked that the Commission approve these rules to begin the rulemaking process. [See Attachment]

Chair Anderson asked for a motion and second to approve the incentive leave rules to begin the rulemaking process as presented by Ms. Bowling. Commissioner Peedin made a motion to approve the rules. Commissioner Ragland seconded the motion. The Commission voted. The motion was made and carried.

Next Ms. Bowling presented to the Commission for consideration and approval, Rule 25 NCAC 1E.0203 Vacation Leave Credits to begin the rulemaking process. The Office of State Personnel proposed that vacation leave accrual rates for state employees be increased in order to maintain competitiveness with other public and private employers. This proposal was made based on an analysis of vacation leave accrual practices of competitors. The proposal will combine the 0-2 years with 2 but less than 5 years to create a less than 5 years category. The proposal will also increase the annual accrual rate by 2 hours per year for each of the years of total state service category. Ms. Bowling recommended that the Commission approve the rule to begin the rulemaking process. [See Attachment]

Chair Anderson asked for a motion and second to adopt the rule regarding vacation leave credits, as presented by Ms. Bowling, to begin the rulemaking process. Commissioner Bailey made a motion to approve the rule. Commissioner Peedin seconded the motion. The Commission voted. The motion was made and carried.

Next, Mr. Dusty Wall, Human Resources Managing Partner, presented to the Commission for consideration and approval, **Rule 25 NCAC 1E.0103 Leave Offsetting**, to begin the rulemaking process. Leave offsetting was proposed in response to agencies' request for policy clarification on the practice of leave offsetting and to ensure consistent application of the policy throughout State government. Leave offsetting occurs when an employee works additional hours outside their normal schedule in a work week in which they also have scheduled or taken time off. The additional time worked offsets the time that the employee intended to cover with available leave. The number of leave hours originally charged must be reduced by the number of additional hours worked. Leave offsetting is mandatory. An employee cannot be paid for the leave and the additional time worked unless provided by policy. Leave offsetting applies to all types of leave except Holiday Leave, Civil Leave and Other Management

Approved Leave. Mr. Wall asked that the Commission approve the Leave Offsetting Rule to begin the rulemaking process. **[See Attachment]**

Chair Anderson asked for a motion and second to adopt the rule regarding leave offsetting, as presented by Mr. Wall, to begin the rulemaking process. Commissioner DeVane-Hayes made a motion to approve the rule. Commissioner Ragland seconded the motion. The Commission voted. The motion was made and carried.

Next, Ms. Charlene Shabazz, Human Resources Partner, presented to the Commission, for consideration and approval. the following rules: **25 NCAC 1N.0601 Purpose, 1N.0602 Policy, 1N.0603 Office of State Personnel Responsibility, 1N.0604 Agency Responsibilities, 1N.0605 Employee Responsibility**, to begin the rulemaking process. The Lactation Support rules are proposed to be adopted in compliance with the Patient Protection and Affordable Care Act that amends the Fair Labor Standards Act by requiring employers to provide reasonable break time for lactation (expressing of milk) to employees subject to the act. Ms. Shabazz stated that the law came into effect March, 2010. Additionally the program will assist agencies in the development of work/life balance initiatives to support the wellness and health of employees of North Carolina State Government. Ms. Shabazz recommended the approval of these rules to begin the rulemaking process in order to be in compliance with the Fair Labor Standards Act. **[See Attachment]**

Next, Ms. Shabazz stated that because the Fair Labor Standards Act is already effective, the Office of State Personnel needed to provide guidance to agencies and universities as to how to implement the law. Therefore, Ms. Shabazz asked for approval of the Lactation Support Policy. Ms. Shabazz stated that prior to the federal law becoming effective in March, 2010, the Office of State Personnel worked with the North Carolina Child Fatality Taskforce to work on lactation support because of all of the research that has been conducted regarding the health benefit for both the child and the parent. When the child and parent are healthy, they are more productive at work and the state pays less money in health care benefits. The Office of State Personnel also wanted this to be a part of our overall work life initiative. **[See Attachment]**

Commissioner Ragland asked how it would be set up, i.e. would you need existing rooms. . . Ms. Shabazz explained the requirements of the law on providing to employees a room for lactation of milk. Commissioner Ragland also asked about the storage. Ms. Shabazz stated that the employee is responsible for the storage of the milk. Ms. Shabazz stated that once the policy and rules are approved, the Office of State Personnel will work with the Division of Public Health to provide information to employees and to its employers on how to implement the guidelines. Chair Anderson asked what the effective date would be for the policy. Ms. Shabazz stated that the effective date would be July 1, 2010.

Chair Anderson asked for a motion and second to approve the Lactation Support Policy with an effective date of July 1, 2010. Commissioner Ragland made a motion to approve the Lactation Support Policy. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Next Chair Anderson asked for a motion and second to adopt the lactation support rules as presented by Ms. Shabazz to begin the rulemaking process. Commissioner Ragland made a motion to adopt the lactation support rules. Commissioner Rascoe seconded the motion. The Commission voted. The motion was made and carried.

Ms. Shabazz stated that Mr. Tom Vitaglione of the North Carolina Child Fatality Taskforce was present at the meeting. However, he had to leave to go back to the General Assembly. Mr. Vitaglione wanted to publicly thank the Commission for taking up the issue on lactation support.

Next, Ms. Ruth Barlow, Statewide Wellness Coordinator, presented to the Commission, for consideration and approval, proposed revisions to the Worksite Wellness Policy. Ms. Barlow stated that the annual review of the Office of State Personnel Wellness Policy had been completed. The proposed revisions are to edit and update parallel changes in other applicable policies, guidelines, and existing statutes. Ms. Barlow gave a brief summary of the proposed revisions. Ms. Barlow asked that the Commission approve the proposed revisions. [See **Attachment**]

Commissioner Ragland asked if the agencies were required to use this policy or could they have their own. Ms. Barlow stated that they generally use this policy as a foundation and then they may tweak it to fit their own agency.

Chair Anderson asked for a motion and second to approve the Worksite Wellness Policy revisions as presented by Ms. Barlow. Commissioner Bailey made a motion to approve the policy revisions. Commissioner Shatley seconded the motion. The Commission voted. The motion was made and carried.

Executive Session

1. **Spencer Batchelor v. North Carolina State University Campus Police** Tab 1
2. **Robert L. Hamm v. North Carolina Department of Correction** Tab 2
3. **Charolettee Hope v. Cumberland County Department of Social Services** Tab 3

4. Dwight Steven Murphy v. North Carolina Department of Health and Human Services, Division of Services for the Blind Tab 4
5. Janet R. Reed v. Brunswick County Department of Social Services Tab 5
6. Steven Roman v. North Carolina Department of Correction, Division of Community Corrections Tab 6

*Status of the Following Contested Cases

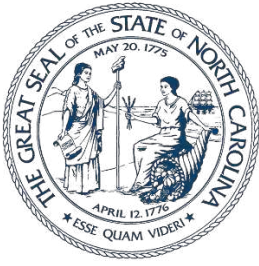
Quintino Brooks v. North Carolina Central University

(Continued until the August 19, 2010 State Personnel Commission Meeting)

Willie Hubbs v. Broughton Hospital

(Continued until the August 19, 2010 State Personnel Commission Meeting)

Exhibit D



Office of State Human Resources

ROY COOPER
Governor

BARBARA GIBSON
Director, State Human Resources

May 30, 2017

TO: LME/MCO Human Resources Directors

FR: Dominick Derasmo, M.A.
Local Government Services

RE: Submission of Area Director Salary Information

The Office of the State Auditor (OSA) recently completed a performance audit of a Local Management Entity/Managed Care Organization (LME/MCO) created by Chapter 122C of the North Carolina General Statutes.

Consistent with the recommendations in this audit, the Office of State Human Resources (OSHR) is requesting that you submit the salary of your Area Director to our office on or before June 30, 2017. If the salary rate of your Area Director exceeds the maximum salary range established by the State Human Resources Commission (SHRC) in May, 2010, we are also requesting that you submit supporting documentation of comparable salaries in comparable operations within the region as required by N.C.G.S. 122C-121. The established salary range for Area Directors is as follows:

Minimum	Midpoint	Maximum
\$105,576	\$146,470	\$187,364

Please ensure that any salary data or compensation documentation submitted to OSHR meets the state law requirements specified in N.C.G.S. 122C-121.

You can submit your information to Dominick Derasmo, Local Government Program Lead, by email at dominick.derasmo@nc.gov. If you have any questions about your submission, please call Dominick at 919-807-4822.

We appreciate your cooperation with this request.

Exhibit E



Office of State Human Resources

ROY COOPER
Governor

BARBARA GIBSON
Director, State Human Resources

MEMORANDUM

To: Nancy Astrike, Division Director, Diversity & Workforce Services - OSHR
Dominick D'Erasmus, HR Manager, Local Government -OSHR

From: Dennis Schoch, Manager Classification & Compensation - OSHR

Date: August 10, 2017

Re: LME Salary Range

In 2008, OSP (OSHR) was asked to look at establishing a salary range for the LME Directors across the state. The data used was the current salaries, as well as the comparison of salaries of the CSB's employees (Community Services Boards) from the state of Virginia.

In 2010, OSP (OSHR) updated the range per legislative increases since the last revision and now in 2017 we have been asked once again to look at updating the salary range.

To be consistent, the same method in 2010 was used to determine the new range as of 7/1/2017:

Year	Legislative Increase	Minimum	Midpoint	Maximum
2010	0%	\$105,576	\$146,470	\$187,364
2011	0%	\$105,576	\$146,470	\$187,364
2012	1.20%	\$106,843	\$148,228	\$189,612
2013	0%	\$106,843	\$148,228	\$189,612
2014	\$1,000	\$107,843	\$149,228	\$190,612
2015	0%	\$107,843	\$149,228	\$190,612
2016	1.50%	\$109,461	\$151,466	\$193,471
2017	\$1,000	\$110,461	\$152,466	\$194,471

It is being recommended that the salary range for the LME's Directors be as follows:

Minimum	Midpoint	Maximum
\$110,461	\$152,466	\$194,472

Please contact me if you have any questions.

cc: Lou Ann Phillips
Andrea Clinkscales
Vira Hogan

Exhibit F



Office of State Human Resources

ROY COOPER

Governor

BARBARA GIBSON

Director, State Human Resources

August 10, 2017

Rose Godby, HR Director
Cardinal Innovations LME
4855 Milestone Avenue
Kannapolis, NC 28081

Dear Ms. Godby,

Thank you for your recent submission of salary data and supporting documentation related to your Area Director/CEO. The Office of State Human Resources (OSHR) has revised the salary range for the Area Director/CEO by applying all legislative adjustments since 2010 to the previously approved maximum of the salary range. As such, the new maximum of the range is \$194,471 effective immediately. We are willing to approve 5% above the maximum as an exception, which is \$204,195.

Based on the information you submitted, the salary of your Area Director/CEO is above this new rate and, therefore, out of compliance. Please work to adjust the Area Director/CEO salary accordingly and notify us of how you have remedied this situation. In the future, please ensure that any salary adjustment complies with the provisions of G.S. 122C-121- the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

We appreciate your attention to this matter and look forward to working with you in the future.

Lou Ann Phillips

A handwritten signature in blue ink, appearing to read "Lou Ann Phillips".

State Human Resources Deputy Director

Cc: Dr. Jason Vogler: Director of Mental Health, Developmental Disabilities and Substance Abuse Services

Equal Opportunity Employer

State of North Carolina | Office of State Human Resources

116 West Jones Street | 1331 Mail Service Center | Raleigh, NC 27699-1331

oshr.nc.gov | 919 807 4800 T | 919 715 9750 F

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Contested Case Hearing was served on the following by U.S. Mail, postage pre-paid:

Lars Nance
General Counsel, Office of State Human Resources
116 West Jones Street
Raleigh, NC 27603

This the 18th day of September, 2017.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Christopher W. Jones, N.C. Bar No. 27265
Samuel B. Hartzell, N.C. Bar No. 49256
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Counsel for Cardinal Innovations Healthcare Solutions