

# **State of Arizona Office of the Auditor General**

**PERFORMANCE AUDIT**

## **ARIZONA STATE PERSONNEL BOARD**

**Report to the Arizona Legislature  
By Douglas R. Norton  
Auditor General  
November 1998  
Report Number 98-19**



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AUDITOR GENERAL

**STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL**

DEBRA K. DAVENPORT, CPA  
DEPUTY AUDITOR GENERAL

November 10, 1998

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Judith Henkel, Executive Director  
Arizona State Personnel Board

Dr. Betty Teague, Vice Chair  
Arizona State Personnel Board

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona State Personnel Board. This report is in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee and is conducted under the authority of A.R.S. §41-1279.03.

The report focuses on the Board's ability to render timely decisions on agency disciplinary actions and "whistleblower" complaints. While the Board's decisions appear appropriate, its actions are not timely. The Board takes an average of 145 days to render a decision following the last day of testimony at hearings. However, this could be reduced to approximately 64 days. We recommend several actions that would both speed the Board's processes and assist the Board in meeting its statutory requirements.

As outlined in its response, the Board agrees with our recommendations for statutory changes regarding meeting notice requirements, and time frames for rendering decisions. The Board does not agree with our recommendations, although already provided for in statute, to produce transcripts of its hearings only upon request of the parties and to require the requesting parties to pay for the cost of the transcripts.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on November 11, 1998.

Sincerely,

Douglas R. Norton  
Auditor General

Enclosure

# SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona State Personnel Board. This audit was conducted pursuant to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

The five-member Arizona State Personnel Board (Board) is responsible for providing an impartial hearing process for the State and its permanent status employees with respect to three types of agency disciplinary actions: dismissals, suspensions for more than 40 working hours, and demotions. In 1989, the Board's jurisdiction expanded to include the consideration of "whistleblower" complaints.

## **Board Could Substantially Reduce Time to Hear Appeals (See pages 9 through 14)**

The Board can improve its appeals process by reducing the overall time it takes to hear appeals and render decisions. Currently, the Board's hearing officers average 111 days to complete and forward their *Findings of Fact, Conclusions of Law, and Recommendation* report to the Board following the last day of hearing testimony. This occurs largely because of their reliance on verbatim transcripts rather than using notes and tape recordings as hearing officers for other agencies do. While rule requires hearing officers to submit these reports within 10 days after the last day of a hearing, the Board currently defines the last day of hearing as the day hearing officers receive transcripts. The Board's current policy of providing transcripts to hearing officers and producing these transcripts in-house delays hearing officer reports.

Despite this, statute makes no provision for providing transcripts to hearing officers, but only to parties involved in the hearing if they request transcripts. Specifically, A.R.S. §41-785(B) states that "The personnel board shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits, and shall transcribe such record on request of either party." Therefore, the Board should cease producing transcripts for every hearing and providing these transcripts to hearing officers, and provide transcripts only upon request of either party to the hearing. In addition to providing transcripts only upon request, the Board should require the requesting party to pay for the costs of the transcripts as allowed by A.R.S. §41-1061(F). Currently, because transcripts are routinely provided, and without charge, there is no disincentive for a party to request a transcript whether needed or not. Finally, the Board should require hearing officers to submit their *Findings of Fact, Conclusions of Law, and Recommendation* reports to the Board within 30 days following the last day of testimony.

In addition to allowing hearing officers an excessive amount of time to produce their reports, the Board also exceeds the statutory time frame for making decisions on appealed state agency personnel actions. Despite statute requiring Board decisions within 30 days following the conclusion of a hearing, the Board currently exceeds this mandate. For example, during fiscal year 1997-98, the Board exceeded the 30-day requirement in almost half of the 69 cases it considered, and averaged 46 days to render a decision in these cases. Board compliance with A.R.S. §41-785(B), which requires the Board to provide parties involved in a hearing at least 20 days' notice of the hearing, contributed to its inability to render a decision within 30 days for these cases. However, in 76 percent of Board decisions that exceeded the 30-day requirement during fiscal years 1996-97 and 1997-98, the Board could not notify the parties to the case at least 20 days before the Board's next scheduled meeting and had to wait until a following meeting to hear the case.

To allow for Board compliance with statute, the Legislature should consider changing both the Board's notice requirement for meetings and the time required to render a decision. First, the Legislature should consider amending statute to provide for a 10-day meeting notice period. This would better allow the Board to render timely decisions and would be comparable to the notice period provided by other state agencies. Additionally, the Legislature should consider expanding the time requirement for Board decisions from 30 to 45 days. Even providing the Board an additional 15 days to render its decision following the conclusion of a hearing, the total time needed to issue its decisions can be reduced by over two months.

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# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the State Personnel Board. This audit was conducted pursuant to a May 27, 1997, resolution of the Joint Legislative Audit Committee.

## History and Responsibilities

In 1968, the Legislature enacted laws establishing a merit system for state employees and a Personnel Commission comprised of five appointees to manage that system.<sup>1</sup> This merit system consists of laws and rules developed to uphold principles of fairness, equality, and open competition in all areas of public sector employment. The 1968 legislation also allocated staff to administer the Commission's day-to-day activities under a personnel director. In 1973, legislation moved the Personnel Commission to the Personnel Division within the Department of Administration (DOA), and the Personnel Commission was renamed the Personnel Board. In 1978, the Board was officially separated from DOA to ensure Board neutrality.

The Board, which consists of five governor-appointed members, hears and reviews disciplinary appeals and "whistleblower" complaints filed by state employees. Members, who serve three-year terms, include a person who for more than five years managed a component or unit of government or industry with more than 20 employees, one professional personnel administrator, one state employee, one person active in business management, and one public citizen. These Board members are responsible for providing an impartial hearing process to the State and its permanent status employees with respect to three types of agency disciplinary actions: dismissals, suspensions for more than 40 working hours, and demotions. In 1989, the Board's jurisdiction was expanded to include the consideration of whistleblower complaints, which involves any personnel action taken against an employee or former employee of the State, that the individual believes was taken in reprisal for his or her disclosure of information to a public body.

Further, in April 1997, the Governor approved Laws 1997, Chapter 288, that established a Personnel Rules Review Committee to study the existing personnel rules and to review all aspects of the state personnel system, including the operation of the Personnel Board. To facilitate its review of the State's personnel system, the Committee established several work

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<sup>1</sup> The three state universities, the Department of Public Safety, the Governor's Office, the Legislature, the courts, the School for the Deaf and the Blind, the Board of Regents, and the Board of Directors for Community Colleges were exempted from this system.

teams, one of which is specifically reviewing the operation of the Personnel Board. Recommendations from these work teams are due to the Committee by October 1998.

## **Appeals Process**

Once a state agency takes disciplinary action against a permanent status employee, that individual may file a written appeal with the State Personnel Board. The Board's staff then sets a hearing for the appeal by assigning one of its contracted hearing officers to the case. Both the state employee (appellant) and the state agency (respondent) provide testimony and exhibits during the hearing. Following these proceedings, hearing officers deliver a written report to the Board with the case facts and recommended action in the form of a *Findings of Fact, Conclusions of Law, and Recommendation* report. When the Board receives the hearing officer's report, its staff places the appeal on the agenda for the Board's consideration at its next monthly meeting. Approximately two weeks prior to a Board meeting, Board staff supply each member with copies of the case file materials. The materials supplied include the disciplinary letter, appeal letter, hearing officer's report, and any objections to the hearing officer's report. The Board uses this material, as well as public testimony, transcripts, and any other information from the meeting to render its decision on the appeal. Ultimately, all Board decisions may be appealed to Superior Court.

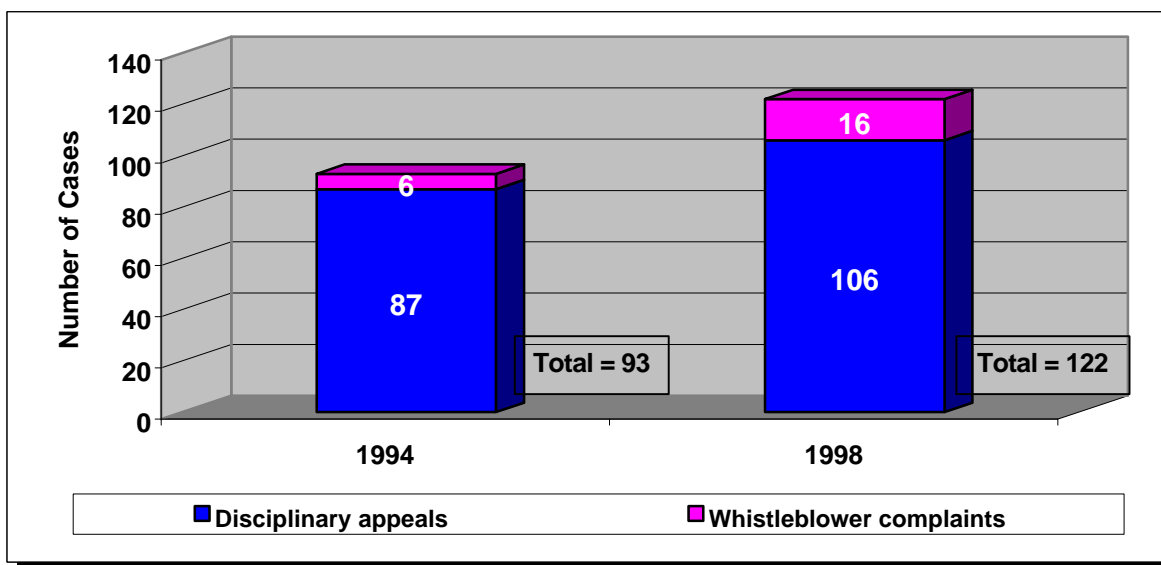
## **Board Decisions**

The Board's workload has increased in recent years. In fact, as noted in Figure 1 (see page 3), between fiscal year 1993-94 and fiscal year 1997-98, the number of disciplinary appeals and whistleblower complaints completed by the Board grew from 93 to 122. While the Board receives cases involving all three disciplinary appeals (dismissals, suspensions, and demotions) and whistleblower complaints, dismissal appeals are the most common. For instance, dismissal appeals comprised 67 of the 93 appeals completed during fiscal year 1993-94 and 77 of the 122 appeals completed during fiscal year 1997-98.

Although the number of appeals and complaints completed by the Board has increased since fiscal year 1993-94, the number of Board decisions favoring the disciplining agencies has also increased. As illustrated in Figure 2 (see page 4), in fiscal year 1993-94 the Board rendered decisions in 55 of the 87 disciplinary appeals completed, and affirmed the State's action in 36 of those cases. In fiscal year 1997-98, the Board rendered decisions on 60 of the 106 disciplinary appeals completed, and affirmed the State's action in 45 of those cases. According to the Board's executive director, agencies have improved the support and documentation for the disciplinary actions they have taken. Consequently, the Board more frequently denies appeals and affirms the agencies' disciplinary action. Additionally, only 12 Board decisions have been appealed to Superior Court during the last two fiscal years. While 6 of the decisions are still pending before the Court, the Court has overturned only 1 of the Board's decisions.

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**Figure 1**  
**Arizona State Personnel Board**  
**Cases Completed**  
**Years Ended June 30, 1994 and 1998**



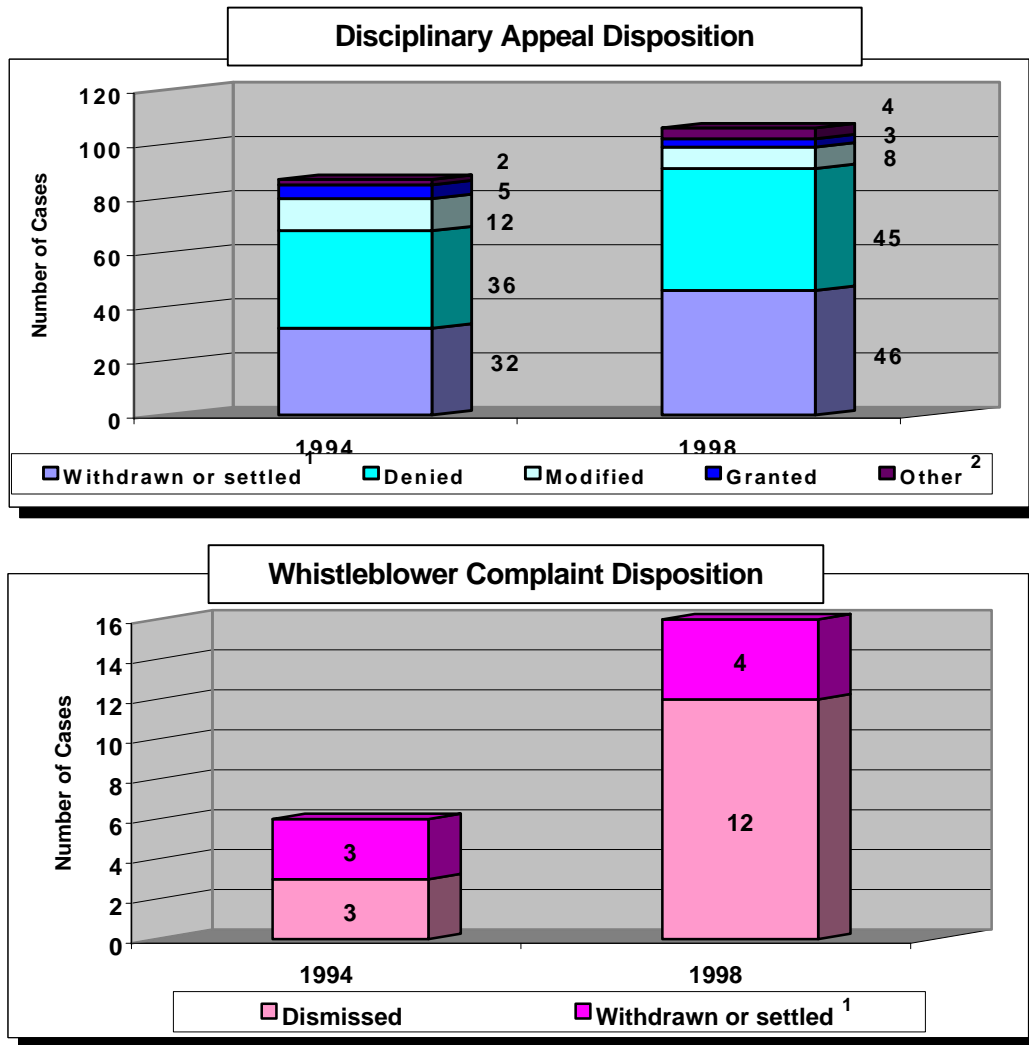
Source: Arizona State Personnel Board's "Appeals Index" for the years ended June 30, 1994 and 1998.

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While the Board affirms agency actions in the majority of disciplinary cases it considers, as illustrated in Figure 2 (see page 4), the Board dismissed all whistleblower complaints it considered during fiscal years 1993-94 and 1997-98. Unlike disciplinary appeal cases, in whistleblower complaints employees bear the burden of proof to demonstrate that the personnel action taken against the employee resulted from the employee's disclosure of information concerning the agency. Board decisions indicate that employees have not been able to prove that this was the case.

Figure 2

Arizona State Personnel Board  
Disposition of Cases Completed  
Years Ended June 30, 1994 and 1998



<sup>1</sup> In those cases where the Board did not render decisions, appellants either withdrew the issue or both parties agreed to a settlement prior to reaching a Board decision.

<sup>2</sup> Includes dismissed disciplinary appeals, appeals where the Board determined it did not have jurisdiction, or appeals that were dismissed due to lack of prosecution.

Source: Arizona State Personnel Board's "Appeals Index" for the years ended June 30, 1994 and 1998.

## **Board Staffing and Budget**

Currently, the Board is appropriated three full-time equivalent (FTE) positions: an Executive Director who reports to the Board, an administrative assistant, and an administrative secretary. The Board also contracts with a private attorney to provide legal counsel and to represent Board decisions appealed to Superior Court. The Board uses outside counsel because the Attorney General's Office represents state agencies in disciplinary appeals and whistleblower complaints before the Board; therefore, Attorney General representation for the Board could create a potential conflict of interest.

In addition to its staff, the Board contracts with nine hearing officers, all attorneys, throughout Arizona to conduct hearings on the disciplinary appeals and whistleblower complaints it receives. The Board is exempt from using hearing officers from the Office of Administrative Hearings due to the potential for conflicts of interest and the experience and expertise of its current pool of hearing officers. To ensure independence, none of the Board-contracted hearing officers are state employees. The State Procurement Office handles the hearing officer contract.

The Board's three FTEs, along with its operating expenses, are funded through the State General Fund (see Table 1, page 6).

## **Audit Scope and Methodology**

The audit focused on two primary issues. First, auditors attempted to determine if the Board's hearings and decisions were appropriate. Additionally, the audit focused on the Board's ability to hear appeals in a timely manner, including its compliance with statutorily defined time frames.

To determine if Board decisions were appropriate, auditors reviewed 120 Board decisions issued from July 1996 to June 1998.<sup>1</sup> Moreover, auditors interviewed three past appellants, two agency attorney general representatives, three Board hearing officers, and one Arizona Federation of State, County, and Municipal Employee representative. For the most part, parties involved in Board proceedings indicated that the Board functioned appropriately.

To assess the Board's compliance with established time frames, auditors attended one day of a hearing and three Board meetings, reviewed minutes and documents from all Board

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<sup>1</sup> In fiscal year 1996-97 the Board considered 54 cases. However, the audit team reviewed only 51 cases because 2 cases were sealed for confidentiality, and in 1 case the hearing officer's decision date could not be determined. In fiscal year 1997-98 the Board considered 72 cases. However, the audit team only reviewed 69 cases because 2 cases were sealed for confidentiality and 1 was sent back to the Board to be re-heard.

**Table 1**  
**Arizona State Personnel Board**  
**Schedule of Revenues, Expenditures, and Reversions**  
**Years Ended June 30, 1996, 1997, and 1998**  
**(Unaudited)**

	1996	1997	1998
Revenues:			
State General Fund appropriations	<u>\$306,700</u>	<u>\$310,600</u>	<u>\$385,800</u>
Expenditures: <sup>1</sup>			
Personal services	80,775	81,013	83,736
Employee related	16,551	16,348	16,688
Professional and outside services	141,335	165,031	222,382
Travel, in-state	535	480	551
Other operating	32,137	31,828	32,276
Capital outlay	<u>14,259</u>	<u>1,511</u>	
Total expenditures	<u>285,592</u>	<u>296,211</u>	<u>359,633</u>
Reversions to the State General Fund	<u>21,108</u>	<u>14,389</u>	<u>26,167</u>
Total expenditures and reversions to the State General Fund	<u>\$306,700</u>	<u>\$310,600</u>	<u>\$385,800</u>

<sup>1</sup> Includes immaterial administrative adjustments applicable to the prior year.

Source: The Uniform Statewide Accounting System *Revenues and Expenditures by Fund, Program, Organization, and Object* and *Trial Balance by Fund* reports for the years ended June 30, 1996, 1997, and 1998.

meetings since July 1996, and reviewed the same 120 disciplinary appeals and whistleblower complaints the Board considered from July 1996 to June 1998. This case review concentrated on the Board's time frames established in statute and rule. Additionally, auditors interviewed Board members and staff, contacted seven personnel boards in other states, and

interviewed representatives from the Arizona State Liquor Board, the Office of Administrative Hearings, and two state agencies also exempt from using hearing officers from the Office of Administrative Hearings.<sup>1</sup> Finally, auditors contacted representatives from the Maricopa Superior Court, the Maricopa County Personnel Department, and the City of Phoenix Merit Board.

This report presents one finding, along with recommendations, addressing means by which the Board can substantially reduce the time required to render decisions.

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Board members, Executive Director and staff of the State Personnel Board, and the Board's appeals counsel for their cooperation and assistance throughout the audit.

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<sup>1</sup> Seven personnel boards in other states having similar characteristics to Arizona's board were identified and contacted, including Colorado, Illinois, Iowa, Mississippi, Missouri, Nebraska, and North Carolina. These personnel boards either contract with hearing officers, require hearing officers to be attorneys, render the final decisions, or meet monthly.

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## FINDING I

### BOARD COULD SUBSTANTIALLY REDUCE TIME TO HEAR APPEALS

The Board can improve its appeal process by reducing the overall time it takes to hear appeals and render decisions. Currently, hearing officers require in excess of 100 days to forward their *Findings of Fact, Conclusions of Law, and Recommendation* reports to the Board. In addition, despite a statute requiring the Board to render decisions within 30 days following a hearing's conclusion, approximately 50 percent of Board decisions surpassed this threshold during fiscal year 1997-98. These delays are compounded by a statutory requirement that the Board provide at least 20 days' notice of its meetings. To improve the timeliness of hearing officer reports and Board decisions, the Board should cease providing transcripts to hearing officers prior to the issuance of their reports. In addition, to account for the notice period the Board needs to provide to parties involved in the hearing, the Legislature should extend the number of days the Board has to issue its decisions. These changes could reduce the time it takes the Board to render decisions by nearly 50 percent, even though the Board would have additional time to render its decision following the conclusion of a hearing.

#### Background

Prompt Board decisions are important for all parties involved. In fact, delayed Board decisions can potentially harm both appellants and respondents. For example, should an appellant win a decision, delayed Board action effectively postpones an employee's ability to continue earning his or her livelihood. Conversely, the respondent may have to provide a greater amount of compensation for unproductive time (i.e., back pay, benefits, etc.) due to the late action. Timely Board decisions reduce the costs associated with appealed disciplinary actions and help ensure fairness and equality for the State and its permanent status employees.

In an attempt to ensure timely Board decisions, both statute and rule dictate how long the Board and its hearing officers can take to render decisions on appealed disciplinary actions. Specifically, A.R.S. §41-785(E) mandates that the Board enter its decision within 30 days after a hearing's conclusion. Additionally, Arizona Administrative Code Rule R2-5.1-102(B)(4) indicates that hearings shall be considered concluded upon the Board's receipt of the hearing officer's *Findings of Fact, Conclusions of Law, and Recommendation* report; and that hearing officers shall submit this report to the Board within 10 days following the last day of a hearing.

## Discontinuing Transcripts Could Speed Process

Although rule limits the amount of time hearing officers can take to produce their *Findings of Fact, Conclusions of Law, and Recommendation* report, the Board allows hearing officers to delay producing their report until the Board provides verbatim transcripts of the hearing. Currently, hearing officers average 111 days following the last day of hearing testimony to issue their reports to the Board. The Board's present policy of producing verbatim transcripts for the hearing officers to rely on causes this delay. Therefore, as prescribed in statute, the Board should cease producing transcripts for every hearing and provide transcripts only at the request of either party to the hearing. Additionally, the Board should define, within its rule, the amount of time hearing officers can take to submit their reports following the last day of testimony.

***Hearing officer reports delayed by transcripts***—Currently, hearing officers average 111 days to complete and forward their *Findings of Fact, Conclusions of Law, and Recommendation* report to the Board following the last day of hearing testimony, largely because of their reliance on verbatim transcripts. While rule requires hearing officers to submit these reports within 10 days after the last day of hearing, the Board currently defines the last day of a hearing as the day hearing officers receive transcripts. However, a recent increase in both the number of hearing days, as well as the complexity of cases, has delayed the production of transcripts following hearing proceedings. Consequently, while hearing officers took only approximately 39 days in fiscal year 1996-97 to issue their reports following the last day of testimony, the amount of time hearing officers required to deliver their reports in fiscal year 1997-98 grew to an average of 111 days.

The Board's current policy of providing transcripts to hearing officers and producing these transcripts in-house delays hearing officer reports. The Board has historically produced verbatim transcripts of all proceedings and provided these transcripts to hearing officers, allowing officers to delay producing their reports until they receive the transcripts. Additionally, the Board transcribes hearings in-house because outside services were too costly and inaccurate. However, in the first nine months of fiscal year 1997-1998, the Board accumulated a four-and-one-half-month backlog in producing transcripts due to an increase in the number and complexity of cases it considered. As a result, the time it took hearing officers to submit their reports increased to an average of 111 days. Recently, through supplemental money obtained from the Legislature, the Board contracted with a court reporting service to produce transcripts and alleviate the backlog. However, this situation will likely reoccur because the Board does not have the staff to readily produce the transcripts needed to keep up with the Board's current workload.

***Provision of verbatim transcripts to hearing officers not necessary***—Despite the Board's current policy of producing hearing transcripts and providing them to hearing officers, statute makes no provision for providing transcripts to hearing officers, but only to parties to the hearing at their request. Specifically, A.R.S. §41-785(B) maintains that "The personnel

board shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits, and shall transcribe such record on request of either party.” Thus, the Board should only produce transcripts at the request of either party to the hearing and not for the benefit of hearing officers. An Attorney General opinion further validates this position, stating that except when a request is made prior to, or at the hearing, the Board need not transcribe the record before making its decision (Op. Atty. Gen. No. 74-8).

In addition to statute, personnel boards in other states and other Arizona state agencies provide transcripts to either party only upon request. For example, six of the seven personnel boards contacted in other states indicated that transcripts are provided only upon request. Further, the Arizona Health Care Cost Containment System, State Board of Equalization, City of Phoenix Merit Board, and the Office of Administrative Hearings provide transcripts only upon request.

Rather than producing verbatim transcripts for all hearings, other entities require that hearing officers rely on personal notes and tape recordings of proceedings to produce their *Findings of Fact, Conclusions of Law, and Recommendation* reports. While the Board’s hearing officers tape record all hearings, the Board’s policy of producing verbatim transcripts permits hearing officers to delay their reports until the transcripts are available. In contrast, hearing officers for both the Office of Administrative Hearings and the Arizona Health Care Cost Containment System use their notes and tape recordings when producing their reports.

In addition to providing transcripts only upon request, the Board should require requesting parties to pay for the cost of transcripts, as is already allowed by A.R.S. §41-1061(F) and practiced by personnel boards in other states and other Arizona state agencies. By requiring a fee for transcripts, the Board would significantly reduce its costs while ensuring that parties make legitimate requests for transcripts. Currently, personnel boards in Colorado, Illinois, Iowa, Mississippi, Missouri, Nebraska, and North Carolina require requesting parties to pay for the cost of transcripts, as does the Arizona Health Care Cost Containment System and the Arizona State Board of Equalization.

While the aforementioned require a fee for transcripts, these boards and agencies employ various processes to produce the transcripts and collect the appropriate fees. For instance, Nebraska’s employee relations division requires parties to submit a request for transcripts three workdays prior to the scheduled hearing. In Missouri, parties may request transcripts at any point in the appeals process; however, the requesting party is responsible for expenses incurred. If multiple parties request transcripts, the Missouri personnel board splits the cost among these parties. Iowa uses a particularly straightforward system. In Iowa a party can request a transcript at any point in the process. However, since Iowa’s employment relations board tape records all hearings, the board supplies copies of the tapes to requesting parties and those parties proceed to have the transcripts produced at their own expense.

***Deadline needed for hearing officers' reports***—In addition to altering its transcript policy, the Board should require hearing officers to submit their reports to the Board within 30 days following the last day of testimony. While neither statute nor rule specifies the length of time hearing officers should take to issue their reports following the last day of testimony, 111 days appears excessive. Currently, the Board requires that hearing officers submit their *Findings of Fact, Conclusions of Law, and Recommendation* reports 10 days following the day hearing officers receive copies of the transcripts. However, the Board's appeals counsel has expressed concern that hearing officers average over 100 days to submit their reports following testimony and agreed that 30 days from the last day of testimony represented adequate time for hearing officers to issue reports. Thirty days should be sufficient time for hearing officers to receive any final arguments or evidence from parties to the hearing, and to prepare and submit their reports to the Board. In fact, 30 days represents more time than the Arizona State Liquor Board gives its hearing officers to submit reports. Specifically, the Liquor Board statute requires hearing officers to submit their reports to the Board within 20 days of a hearing's conclusion, which the Liquor Board defines as 20 days after the last day of testimony.

## **Board Decisions Exceed Required Time Frame**

In addition to allowing hearing officers an excessive amount of time to produce their reports, the Board also exceeds the statutory time frame for making decisions on appealed state agency personnel actions. While statute requires the Board to make its decision within 30 days following the receipt of a hearing officer's report, the Board exceeded this requirement in 34 of the 69 cases it heard in fiscal year 1997-98. A statutory mandate requiring a 20-day notice period for a meeting largely contributed to those delayed Board decisions. Therefore, the Legislature should consider amending statutes to allow for a 10-day notice period prior to a Board meeting and to allow the Board 45 days to render its decision.

***The Board exceeds statutory time frame to make its decisions***—Despite statute requiring Board decisions within 30 days following the conclusion of a hearing, the Board currently exceeds this mandate. While the Board averaged 29 days to issue a decision in fiscal year 1996-97, the Board took more time to reach its decision in fiscal year 1997-98. Specifically, the Board averaged approximately 34 days to render a decision following the conclusion of hearings for the 69 cases it considered in fiscal year 1997-98. Furthermore, the Board exceeded the 30-day requirement in almost half of these 69 cases, averaging 46 days to render its decision.

***Board compliance with statute prevents timely decisions***—The Board cites A.R.S. §41-785(B) for its inability to render a decision within 30 days. Specifically, the statute requires the Board to provide parties involved in a hearing at least 20 days' notice of the hearing. A 1991 appellate court decision, *Marcella Johns v. Arizona Department of Economic Security*,

maintains that “The Personnel Board must give interested parties twenty days notice of the meeting, whether it is termed a hearing or meeting.” Thus, the Board must give interested parties 20 days’ notice prior to all hearings and Board meetings. Should a hearing officer submit his report less than 20 days before the next regularly scheduled Board meeting, the Board must delay hearing this appeal until its next monthly meeting to provide adequate notice to the parties involved. For example, in 39 of the 51 (76 percent) Board decisions that exceeded the 30-day requirement during fiscal years 1996-97 and 1997-98, the Board received hearing officer reports less than 20 days before the Board’s next meeting. Thus, the Board had to wait until a subsequent meeting to hear these appeals. For the remaining cases, Board decisions were extended because of continuances requested, and agreed to, by parties to the case, or because the Board lacked a quorum to hear the case.

***Legislature should consider changing notice requirement and extending time frame***—To allow for Board compliance with statute, the Legislature should consider changing the Board’s notice requirement and providing the Board more time to render its decisions. Currently, A.R.S. §41-785(B) states that parties shall be notified no fewer than 20 days in advance of a hearing. Amending statute to allow for a 10-day notice would better allow the Board to render timely decisions and would be comparable to the notice period provided by other state agencies. Specifically, A.R.S. §20-163 stipulates that no fewer than 10 days in advance, the Director of the Department of Insurance shall give notice of the time and place of the hearing, stating matters to be considered.

In addition to amending the Board’s meeting notice requirement, the Legislature should consider expanding the time requirement for Board decisions from 30 to 45 days. While shortening the notice period would help, some cases will still require more than 30 days for the Board to render a decision. The Board proposed legislation in a personnel omnibus bill to extend its time frame to 45 days during the 1998 legislative session, but the bill did not pass. However, by increasing the statutory requirement from 30 to 45 days, the Board can better comply with statute.

## **Recommendations Substantially Reduce Time to Render Board Decisions**

Despite giving the Board an additional 15 days to render its decision following the conclusion of a hearing, the total time needed to issue Board decisions can be reduced by over two months if the proposed recommendations are implemented. Currently, the Board takes an average of 145 days to render a decision following the last day of testimony at hearings. This time consists of an average of 111 days for hearing officers to forward their reports and an additional 34 days for the Board to render a decision. However, by requiring hearing officers to submit their reports within 30 days following the last day of testimony, the Board can eliminate 81 days from this process. Accounting for the additional 15 days the Board may need to render its decision, it could reduce the hearing time by 66 days.

## Recommendations

1. The Legislature should consider amending A.R.S. §41-785(B)(E):
  - a. To allow the Board a 10-day meeting notice requirement; and
  - b. To extend the time the Board has to render its decision from 30 to 45 days.
2. To expedite the entire hearing process the Board should stop producing verbatim transcripts of all hearings and providing these transcripts to hearing officers prior to the issuance of their reports. The Board should produce transcripts only upon the request of either party involved in the hearing.
3. The Board should require requesting parties to pay for the cost of transcripts as already allowed by A.R.S. §41-1061(F), and develop procedures to produce transcripts when requests are received, and collect the appropriate fee.
4. The Board should require hearing officers to submit their *Findings of Fact, Conclusions of Law, and Recommendation* reports to the Board within 30 days following the last day of testimony.

## **Agency Response**

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November 4, 1998

Mr. Douglas R. Norton  
Auditor General  
2910 N. 44th Street, Suite 410  
Phoenix, AZ 85018

Dear Mr. Norton:

Enclosed is the board's response to the preliminary audit report of the State Personnel Board. The audit report identifies one finding with four recommendations. As required under the Joint Legislative Audit Committee's procedures, the board's comments incorporate one of the following statements for each recommendation in the report:

1. The finding of the Auditor General is agreed to and the audit recommendation will be implemented.
2. The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.
3. The finding of the Auditor General is not agreed to, but the recommendation will be implemented.
4. The finding of the Auditor General is not agreed to and the recommendation will not be implemented.

If you have any questions concerning this response, please contact me.

Sincerely,

Judith L. Henkel  
Executive Director

Enclosure

cc: Tom Chully, Performance Auditor  
Dale Chapman, Senior Performance Auditor  
Personnel Board Members

## **ARIZONA STATE PERSONNEL BOARD'S RESPONSE TO AUDIT RECOMMENDATIONS**

FINDING: Board could substantially reduce time to hear appeals.

### **RECOMMENDATION 1:**

*The Legislature should consider amending A.R.S §41-785.B and E:*

- A. To allow the board a ten (10) day meeting notice requirement; and*
- B. To extend the time the board has to render its decision from thirty (30) to forty-five (45) days.*

#### **Response:**

The finding of the Auditor General is agreed to and the recommendation will be implemented. Due to the Marcella Johns v. Arizona Department of Economic Security case requiring a twenty (20) days' notice, implementation as to letter A above cannot take effect until a statutory change is made.

Due to the existence of A.R.S. §41-785.E., implementation of letter B above can take place only after the statutory change in the aforementioned statute.

### **RECOMMENDATION 2:**

*To expedite the entire hearing process, the board should stop producing verbatim transcripts of all hearings and providing these transcripts to hearing officers prior to the issuance of their reports. The board should produce transcripts only upon the request of either party involved in the hearing.*

#### **Response:**

The finding of the Auditor General is not agreed to and the recommendation will not be implemented. While the board is cognizant of the statute and the non-preparation requirement for transcripts, the report and findings do not address the overall use and necessity of preparation of the transcripts. The preparation of the transcripts provide multiple benefits which include, but are not limited to, the following:

- A. Public review of the proceedings. Transcripts are routinely requested by the public and press.
- B. Assistance in preparation of accurate findings of fact and conclusions of law.
- C. Actual acceleration of the preparation of findings of fact and conclusions of law. While this appears contra to the finding of delay caused by preparation of the transcripts, the review of actual tapes by the hearing officer, for accuracy of a finding, would take substantially longer, i.e., attempting to locate certain testimony for one sentence on multiple cassettes. The costs for report preparation at the higher hearing officer hourly rates would be substantially higher than the transcription costs.
- D. Most important, and not addressed in the report, are the availability of the transcripts to the board members for review. A review of administrative law indicates that generally decisions by a board will be upheld if they have available to them not only the hearing officer's report but also the record of the proceedings. The board constitutes five (5) lay individuals with various aspects of personnel knowledge; they are not specialists in State Personnel Law as is, for example, an Industrial Commission Judge. The transcripts, therefore, serve the purpose of allowing them, again who have not heard all of the proceedings, to personally review the record. A lay member with other jobs, duties, or lives, if the transcripts are ceased to be produced, the board members, in staff's opinion, will each be required to be furnished with an appropriate tape recorder and tapes as necessary, would they desire to review the proceedings.
- E. The transcripts, of course, assist staff and the parties. As a practical matter, it is anticipated that the transcripts will be requested routinely by the parties. The recommendation further should include a provision that not only the parties but the board should be able to request the transcript be provided. On numerous occasions counsel, before a decision has been made, has been required to review a transcript and present the board, from the transcripts, alternate proposed findings of fact and conclusions of law. Staff also makes use of the transcript for answering questions as required.
- F. The recommendation of the Personnel Board Study Team of the Personnel Rules Review Committee is that transcripts continue to be produced.

Based on the foregoing, the board will direct its efforts to acquire funds to accelerate the preparation of the transcripts to accommodate the Auditor General's finding regarding the delay incurred due to the preparation of the transcript. It is the board's goal to accomplish the recommendations of the Auditor General as to time deadlines for the hearing process, but yet to retain the benefits of the transcription preparation as above stated. Hopefully both can be accomplished.

### **RECOMMENDATION 3:**

*The board should require requesting parties at any point in the process to pay for the costs of transcripts as already allowed by A.R.S. §41-1061.F.*

#### **Response:**

The finding of the Auditor General is not agreed to and will not be implemented. The board's preference in this matter is to keep the present procedure in effect, i.e., production of the transcripts paid from general fund monies. As explained in the response to recommendation number two, it is the board's preference that transcripts continue to be produced through use of general fund appropriations, as has been the case since the 1970's, with the attempt to speed production. The board's preference is to retain the above procedure.

In order of preference, if the above cannot be accomplished, the board would desire to propose a minimal filing fee of twenty to twenty-five dollars (\$20 - \$25) from each party (no specific amount as yet preset). Said amounts would be paid toward transcription costs through the general fund or through a special fund for transcription fees. This contemplates continued transcribing of the record.

The third alternative as to costs is to charge a per page copy fee. Monies collected would also be channeled back into the general fund or into a special fund to be used for transcription.

The fourth alternative is to have, as has been recommended by the Auditor General, the transcripts paid for by a requesting party or requesting parties. Unfortunately this alternatives creates some problems. For example, if one party pays for the transcript, is the board precluded from allowing the other party use of the same? Is the board precluded from using the transcript itself? There is a chance of prejudice occurring. In the opinion of the board, it is best to continue the present practice of producing the transcripts. The fourth alternative would be to have each party pay for the production of the transcripts.

In the board's hierarchy of desires, the fifth and final alternative is to follow the recommendation of the Auditor General, which is not to produce the transcripts. This, however, is not a preferred alternative.

It should be noted that the Personnel Board Study Team of the Personnel Rules Review Committee has recommended continued production of the transcript be mandatory as opposed to the present statutory permissive requirement, and no charge of the cost of preparation was recommended or addressed by that entity.

#### **RECOMMENDATION 4:**

*The board should require hearing officers to submit their findings of fact, conclusions of law, and recommendation report to the board within thirty (30) days following the last day of testimony.*

#### **Response:**

The finding of the Auditor General is agreed to and the recommendation will be implemented, except that implementation can take place only after the resolution of the transcript issue. If the transcripts are not prepared, implementation could take place presently. If the transcripts are prepared, until the acceleration of the transcripts take place, the decision may not occur within thirty (30) days.