

**SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED
REGULATIONS OF THE PERSONNEL COMMISSION THROUGH THE
DIVISION OF HUMAN RESOURCE MANAGEMENT**

September 28, 2012

Held at the Gaming Control Board, Carson City, Nevada and at the Grant Sawyer State Building, 555
East Washington Avenue Las Vegas, Nevada via videoconferencing

Attendees in Carson City:

Lee-Ann Easton, Administrator, Division of Human Resource Management
Shelley Blotter, Deputy Administrator, Division of Human Resource Management
Carrie Hughes, Personnel Analyst, Division of Human Resource Management
Michelle Garton, Supervisory Personnel Analyst, Human Resource Management
Donald Coffin
Gene Columbus, President of Nevada Corrections Association
Robert Hix
James Kelly, State Secretary for the Nevada Corrections Association
Priscilla Maloney, Labor Representative, AFSCME Local 4041
Imran Hyman, Management Analyst, DCFS
Alys Dobel, Personnel Officer, Department of Motor Vehicles
Rob Easton, Personnel Analyst, Department of Transportation
Jim Hogan
Kay Scherer, Chairperson, Employee-Management Committee
Christine Ripley, Personnel Analyst, Division of Human Resource Management
Tawny Polito, Executive Assistant, Division of Human Resource Management

Attendees in Las Vegas:

Willette Gerald, Personnel Officer, DMV
Alesia Kupsick, Administrative Assistant, Division of Human Resource Management

1. Call to Order

Shelley Blotter: Called the meeting to order at approximately 9:00 a.m. She explained that the purpose of the workshop is to solicit comments from affected parties with regard to a newly proposed temporary regulation. Comments received regarding this regulation will be summarized for the Personnel Commission and provided to them prior to their consideration of the regulation.

2. Review of Proposed change to NAC 284:

NAC 284.697 When Resolution of Grievance Becomes Binding

Shelley Blotter: The intent of the regulation change is to clarify that the final decision rendered by the Employee-Management Committee is binding and therefore not appealable to a court. Ms. Blotter went on to say that this regulation has also been

discussed at a recent Employee-Management Committee (EMC) meeting. A representative of the Dyer Lawrence Law firm has a case that is in the court system right now, and they feel that EMC decisions are appealable for judicial review. They have provided written comments and we will submit those comments with any we receive today to the Personnel Commission. Ms. Blotter also stated that in 1989 Assembly Bill 295 amended the statute related to grievances. It appears from the testimony that the State of Nevada Employees Association proposed the statute change, and that the amendment would make EMC decisions final and binding such as in arbitration. It is the intent of the Division of Human Resource Management to request an AG's opinion prior to submitting the proposed regulation to the Personnel Commission. Attendees were invited to come forward and make comments.

Gene Columbus, President of Nevada Corrections Association: Wanted to confirm that the Division had received Dyer Lawrence's information along with Judge Wilson's Court order.

Shelley Blotter: Acknowledged receipt.

Gene Columbus: Requested a common sense approach. Employees go to the EMC for work-related issues. A lot of these issues are minor, but most of them affect an employee's career, can affect an employee's paycheck, and at times affect employee's lives. He stated that grievances should not be limited to just the EMC for a decision as the EMC members are not lawyers, and they are very biased. Mr. Columbus said there should be oversight of the EMC and employees should be able to appeal the EMC's decisions.

Priscilla Maloney, AFSCME Local 4041: Stated she could not speak to AFSCME Local 4041's predecessors' legal analysis back in 1989, but if the statements in the Legislative history were to the idea of a conceptual, final and binding notion of arbitration, even in our current Uniform Arbitration Act, NRS 38, there are avenues for access to the Courts. Nevada's act is based on a model act so these are generally understood concepts, even in final and binding arbitration. There is NOT a foreclosure of ANY Court access, either to enforce an arbitration award or to vacate it. For instance, in the Edwards case a decision of the Personnel Commission was in fact appealed under 233B.130 and that was not even a subject matter of anything, but minimal dicta type discussion in the Court decision there, that this was an appropriate venue, Petition for Judicial Review to review a matter of the Personnel Commission. We do not oppose this regulation change in any way to be intended as a comment on the good, hard work that the EMC does. What we're concerned about is this regulation change is carving out the other areas in 284, where DHRM is subject in certain context, to Judicial Review through the Nevada Administrative Procedures Act 233B. So carving this one narrow area out gives us great cause for concern and we absolutely oppose that. We apparently have a ruling from a District Court Judge here in Carson, from First Judicial District on August 22, 2012 that basically makes our argument that decisions of the EMC are being challenged, and arguably the agency involved, not Division of Human Resources Management, is arguing that 233B.130 is not an appropriate vehicle to challenge an EMC decision. We would disagree with that position of the agency. We also agree with Judge Wilson's analysis where he states, if there was to be a cutoff of, again, not changing the standard of review

but just the right to review of this one narrow part of 284, then that should be handled through legislation.

James Kelly, State Secretary for the Nevada Corrections Association: There is only one real matter to discuss, the concept of stare decisis. Are we going to let the EMC, with their limited knowledge of the law reverse “that with which has already been decided” by a higher Court authority? The Employee-Management Committee makes legal rulings regarding the fate of Nevada’s workers that will affect them in the work place. How can this become a binding decision without any other legal recourse, if the legal ruling is wrong? Every other legal body in the land is subject to review except the Supreme Court. Why should the EMC be any different? I vigorously oppose any changes to this based on the fact that there are laws and legal issues that need to be decided, and I don’t see how the EMC could have the authority to override any other Court in the land that has already made the decision on that case.

Kay Scherer, Deputy Director of the Department of Conservation and Natural Resources and Chairperson of the Employee-Management Committee: Ms. Scherer sees the EMC as an opportunity for managers and employees to serve as a peerage group. They have the opportunity to move their grievance forward through supervisors, up through their administration and then come to an independent body to look at that situation. As much as the EMC makes decisions, we also find ways to educate. As it’s structured now, we are not attorneys. We are peers of these individuals, but because of that, when items are taken up on Judicial Review, we are not concentrating during that EMC hearing on perfecting legal record. You have either six members or four members, however it’s equally constituted on either side, but we are working through these issues with the agencies and the employees, and we’re not about building that record. That’s what’s been very difficult for us and for our counsel. The Legislature gave us our own set of statutes and regulations that have been promulgated on that. They were very aware of 233B at the time, but there is no crosswalk there. Judge Wilson entered an order, but it is important to understand that counsel for one of the parties prepared the order for the Judge. One small part of it says that EMC was under the authority of 233B and the Judge signed that. We have counsel on various sides that disagree on whether that’s dicta or comment or whether it’s binding, and I think we will get some of that as that case proceeds through the Court. I know that our EMC counsel is also looking at the opportunity to take another matter up on review, quite simply because we would love to get clarity on this. We will do in EMC whatever it is that we need to do, but you are faced with a body that is not necessarily prepared to fall under 233B. If you are to research this, you will find the timelines that are required under 233B do not match those that are under 284 in the EMC process, so it really creates some conflicts that are going to have to be worked out either through decisions of the Court and what we learn from that or possible legislation. But as we all know, the Personnel Commission is who promulgates the regulations for the EMC. I think that EMC has evolved to a point that no matter how we keep trying to change it’s increasingly becoming an adversarial procedure, where we often have counsel on both sides, and they work well with us to try to get to the truth. Our goal is to find some kind of way that the employee and the employer can work together, get back in the workplace, have a good relationship and keep moving forward. We’re not in the arena where we are dealing with suspensions and

demotions and dismissals, and that's why there is a separate Hearing Officer process I believe, and why we are there as a group of peers. We are very conscious of what our skill set is and what it isn't. I still think we perform a very valuable service in terms of caring about both the agency and more importantly the employees that are in front of us. We are successful if we can find a way to resolve what is happening and get everyone back to work, and if necessary make corrections in the way the agency is handling something or sometimes help an employee to see that in fact they need to possibly make some changes on their own.

3. Adjournment

Shelley Blotter: As no one else came forward to make comments, the workshop was closed.