STATE OF NEVADA
PERSONNEL COMMISSION

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3137, Carson City; and via video conference in Las Vegas at the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401.

MEETING MINUTES
December 6, 2019

COMMISSIONERS PRESENT IN CARSON CITY:

Ms. Katherine Fox, Chairperson
Ms. Patricia Hurley, Commissioner

Ms. Priscilla Maloney, Alternate Commissioner, non-voting
Ms. Mary Day, Alternate Commissioner, non-voting

COMMISSIONERS PRESENT IN LAS VEGAS:

Mr. Gary Mauger, Commissioner
Mr. Andreas Spurlock, Commissioner
Ms. Susana McCurdy, Commissioner

Mr. Armen Asherian, Alternate Commissioner, non-voting

STAFF PRESENT IN CARSON CITY:

Mr. Frank Richardson, Interim Administrator, Division of Human Resource Management (DHRM)
Ms. Beverly Ghan, Deputy Administrator, DHRM
Ms. Michelle Garton, Supervisory Personnel Analyst, DHRM
Ms. Carrie Hughes, Personnel Analyst, DHRM
Ms. Tori Sundheim, Deputy Attorney General, Office of the Attorney General

STAFF PRESENT IN LAS VEGAS:

Ms. Michelle Morgando, Senior Appeals Officer, Hearings Division
Ms. Heather Dapice, Supervisory Personnel Analyst, DHRM

I. CALL TO ORDER, WELCOME, ROLL CALL, ANNOUNCEMENTS

Chairperson Fox: Called the meeting to order on Friday, December 6, 2019, at approximately 9:00 a.m. She welcomed everyone including Alternate Commissioner Susana McCurdy who is serving after the unexpected and unfortunate passing of Commissioner David Sanchez.

II. PUBLIC COMMENT

Chairperson Fox: Advised that no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken under NRS 241.020.

Peter Long: Announced he has been newly appointed as Interim Director of the Department of Administration. Commissioner David Sanchez unexpectedly passed away in October. He served on the Commission since August of 2003 and brought a wealth of HR experience and knowledge to the table; his guidance over the years was invaluable. He was fair but firm and considered every issue that was in front of the Commission fairly and diligently. Commissioner Sanchez was a stickler for process, and you always knew where you stood with him. It is a great loss to the Commission, to DHRM and to the State that he will no longer be able to serve.

Chairperson Fox: Shared she knew Commissioner Sanchez back in 1986 when he was the Director of Human Resources for the City of Las Vegas. He had a perspective on the importance of robust, comprehensive personnel selection methods and he brought that to his role as the Commissioner for the State of Nevada. She always appreciated his perspective on selection instruments and the use of statistics and classification and compensation techniques in terms of employees of the public sector and will miss him dearly. He always had her back and kept her in check and on the path of being an HR professional. He will be missed.

Commissioner Spurlock: Indicated a wreath has been ordered to be placed at the Southern Nevada Veterans Cemetery for Commissioner Sanchez on December 14, 2019, national Lay a Wreath Day.

Chairperson Fox: Thanked Commissioner Spurlock.

III. APPROVAL OF MINUTES OF PREVIOUS MEETING DATED SEPTEMBER 20, 2019 – Action Item

Chairperson Fox: Asked if there were any corrections or changes to be made on the minutes from September 20, 2019. There were none.

MOTION:	Moved to approve minutes of the September 20, 2019, meeting.
BY:	Chairperson Fox
SECOND:	Commissioner Mauger
VOTE:	The vote was unanimous in favor of the motion.

IV. DISCUSSION AND POSSIBLE AMENDMENTS TO THE HEARING OFFICER RULES OF PROCEDURE – Action Item

Michelle Garton: Supervisory Personnel Analyst for the Division of Human Resource Management Consultation and Accountability Unit stated one of the proposed changes to the Hearing Officer Rules of Procedure is relevant to subpoenas. In Subsection IV-1-a it is proposed that the timeframe for service of any subpoena must occur a minimum of 15 days prior to the hearing date; the increase from five days will allow adequate time for an individual to prepare to appear, for the preparation of any documents and for travel arrangements to be made. The next proposed change found in Subsection IV-1-b includes language requiring that subpoenas issued to the State, its public entities and political subdivisions, must be served in accordance with Subsection IV(d) of the Nevada Rules of Civil Procedure. The proposed change in Subsection VI-1-d makes it clear that per diem and travel expenses are to be paid by the party requesting the subpoena, but a Hearing Officer may award these expenses as costs to the prevailing party.

Commissioner Mauger: Stated on page 13, section 1.2, it says, "Hearing officers for personnel appeals are appointed by the Personnel Commission" when actually they are appointed by the Governor. Maybe we should take a look at that language. In section 2.2, the Rules state, "…the Senior Appeals Officer of the Hearings Division shall provide to each party to the claim of a list of three qualified Hearing Division Appeals Officers…" and he believed that language is wrong – the Personnel Commission selects but does not appoint them; the Governor does that. **Tori Sundheim:** Stated that made sense and recommended adding that to a future agenda because the mock-up wasn't there that showed what the Commission would change for public notice purposes.

Michelle Garton: Pointed out that the statute referenced there, NRS 284.091, Hearing officers: Appointment; duties, says, "A majority of the members of the Commission shall appoint one or more hearing officers to conduct hearings and render decisions as provided in NRS 284.376 and 284.390."

Chairperson Fox: Indicated she is in a quandary about this because she thinks Commissioner Mauger is making an important point. It is her understanding that the Commission usually appoints a contract, outside of the State of Nevada Hearing Officer, that was designed to take care of any conflict of interest in terms of a hearing officer for the State. Now, when the Commission makes that recommendation to appoint, does the Governor actually confirm the appointment? Let us say the Commission recommends a person to be a hearing officer with this contract; does that ultimately have to be approved by the Governor?

Tori Sundheim: Answered she was not sure. The statute does say, "…a majority of members of the Commission shall appoint one or more hearing officers…" She would have to research whether the Governor then confirms that appointment and will report to the Chair after more study.

Michelle Morgando: Senior Appeals Officer for the Hearing Division said there are two types of hearing officers; one is a direct contract, Mr. Cockerill. The remainder are Appeals Officers within the Department of Administration who are appointed by the Governor for two-year terms, but they are independent contractors, not State employees.

Commissioner Mauger: Understood, but the statute says, "hearing officers for personnel appeals shall be selected by Personnel Commission" when they are really not. The Commission selects them, but they are appointed by someone else and the language may need to be clarified. If the legal opinion says it does not need to be clarified, then we move on. **Tori Sundheim:** Stated it is worth looking into and is happy to help.

Chairperson Fox: Suggested DAG Sundheim research the matter and in the meantime approve the regulations. What is important is the time change regarding the subpoenas and she doesn't want to hold up the process. Could DAG Sundheim get back to the Commission with that information by the March meeting? **Tori Sundheim:** Replied in the affirmative.

MOTION:	Approve the proposed amendments to the Hearing Officer Rules of Procedure with the understanding that Deputy Attorney General Sundheim will research the question raised about Hearing Officer appointments.
BY:	Chairperson Fox
SECOND:	Commissioner Mauger
VOTE:	The vote was unanimous in favor of the motion.

V. POSSIBLE DECISION TO RENEW THE CONTRACT WITH THE HEARINGS DIVISION AND THE INDEPENDENT CONTRACTOR CONTRACT OR POSSIBLE RECRUITMENT/ANNOUNCEMENT OF INDEPENDENT HEARING OFFICER - Action Item

Michelle Garton: Stated DHRM recommends the selection of the Hearings Division as the primary source for hearing officers for employee appeals and the selection of Charles Cockerill as Independent Hearing Officer. Information regarding case handling statistics and performance was provided to the Commission at the meeting on September 20, 2019, and DHRM considers the performance of the Hearings Division to be timely and cost effective. The current hearing officer contracts will expire on June 30, 2020, and DHRM is requesting the Commission renew the contracts with the Hearings Division and Charles Cockerill; both contracts could be effective for a period of up to four years. The rates have not changed from the current contracts currently in effect.

Chairperson Fox: Restated DHRM is recommending is that they maintain a contract with an Independent Hearing Officer so that the Division will have four hearing officers to rotate for the northern and southern strike lists. In addition they are recommending continuing to directly contract with a hearing officer so that the Hearings Division will have four hearing officers to rotate for the northern and southern strike lists. **Michelle Garton:** Replied that was correct.

Commissioner Mauger: Stated he has had experience with Charlie Cockerill through the years and has no issues with him. The Commission did get a study on the Hearing Officers and their records and while it was just not as comprehensive as he would have liked from his perspective, he would recommend they accept the staff's recommendation.

MOTION:	Moved to approve DHRM's recommendation regarding the Hearing Officers, with the inclusion of Independent Contractor Charlie Cockerill, to continue on a four-year agreement.
BY:	Commissioner Mauger
SECOND:	Commissioner Hurley
VOTE:	The vote was unanimous in favor of the motion.

VI. DISCUSSION AND APPROVAL OF PROPOSED REGULATIONS CHANGES TO NEVADA ADMINISTRATIVE CODE, CHAPTER 284-Action Item

A. LCB File No. R015-19

Section 1.	NAC 284.361 Use of lists and consideration of certified eligible persons: Applicable conditions.
Sec. 2.	NAC 284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation.
Sec. 3.	NAC 284.586 Civil leave with pay to vote.

Chairperson Fox: Indicated the Commission will hear A first, then B, then C. There may be significant public comment for Item VI-C so before entertaining a motion, once the item is presented the Commission is going to entertain public comment at that time because it might assist in understanding all of the concerns.

Carrie Hughes: Personnel Analyst with the Division of Human Resource Management presented the amendments to LCB File No. R015-19 proposed for adoption. Section 1 makes conforming changes relating to the proposed amendment in Section 2, NAC 284.405. Section 2's proposed amendment will require an agency, prior to beginning a search for an internal reassignment position as part of the reasonable accommodation process, to inform the employee in writing of the circumstances and actions outlined later in the regulation that can forfeit their reassignment rights as outlined in this regulation. The intent is to ensure that an employee will not unknowingly forfeit his or her reassignment rights prior to referral to the Division of Human Resource Management for statewide reassignment. The proposed amendment to NAC 284.586 in Section 3 provides an employee with the right to take civil leave to vote either during early voting or the day of the election. It also changes the deadline for requesting civil leave with pay to vote to the day prior to the day the employee will be taking the leave. This amendment will ensure consistency and application between agencies and allow agencies to better manage coverage during the voting period.

MOTION: Moves to approve the proposed regulation changes to Nevada Administrative Code 284, specifically NAC 284.361 Use of lists in consideration of certified eligible Persons; NAC 284.405 Reassignment of employee with disability who is unable to perform essential functions of position with or without reasonable accommodation; and NAC 284.586 Civil leave with pay to vote.
BY: Chairperson Fox
SECOND: Commissioner McCurdy
VOTE: The vote was unanimous in favor of the motion.

VI-B. LCB File No. R016-19
Section 1. NAC 284.589 Administrative leave with pay.

Carrie Hughes: Explained the proposed amendment moves to NAC 284.589 the provisions relating to blood donations and attendance at a general benefits orientation into a subsection of the regulation that does not require that an employee be available by telephone or to report to work. Additionally, it authorizes an appointing authority or the Division of Human Resource Management to grant up to two hours of administrative leave to employees who are veterans to participate in the Veterans Day at the Legislature event. Finally, it adds language granting administrative leave to an employee who serves on a committee or board created by a statute, such as the Employee-Management Committee, to prepare for such meetings.

MOTION: Moved to approve Item VI-B, LCB File No. R016-19, NAC 284.589 Administrative leave with pay.
BY: Commissioner Hurley
SECOND: Chairperson Fox
VOTE: The vote was unanimous in favor of the motion.

VI-C. LCB File No. R019-19
Section 1. NAC 284.242 Overtime: Authorization.

Carrie Hughes: Explained that currently, if a non-exempt employee is required to work overtime, it must be communicated to the employee at least four hours before being worked unless an unpredictable emergency prevents that communication. This amendment will except positions at agencies that maintain a work week longer than 40 hours or perform duties that affect public safety, health or welfare from this requirement. The intent is to reduce the burden on agencies with mandated staffing levels due to client safety or help of the public as it is difficult for such agencies to provide the four hours' notice that is currently required.

Chairperson Fox: Indicated the Commission would now hear public comment on this item.

Matthew Jordan: Introduced four members of the public who will speak on this issue; they each have personal stories that relate very directly to what this proposed rule will do.

James Navarro: President of the Northern Nevada Prison Chapter addressed the issue pertaining to overtime. On April 4, 2019, they were able to actually get four hours' notice pushed through. Prior to this, they had the ebb and flow of demand based on available personnel, trained peace officers, and medical people, all over the State. Units are incredibly rural like Lovelock and the

Correctional Center is staffed mostly by people living in Reno who ride an hour and a half each day in a van, one way, to get to work. Prior to the four-hour notice, whenever staffing levels were low due to essentially not having people, it caused absolute chaos when officers were unable to attend to their families. Twelve-hour shifts plus three hours of travel a day is tough, and it is incredibly taxing on the families of Nevada. In the south, High Desert State Prison, Three Lakes Valley and Southern Desert Correctional Center, in addition to Jean Conservation Camp, are well over 45 minutes from the edge of Las Vegas. Staffing numbers have dictated that they have had these problems before, and with no notice, it throws people into disarray. This rule could affect 8,000 employees and their families. NDOC has employees in three states that all work in Nevada. Emergencies, employees understand. They wouldn't be in public service if they didn't understand that; they know that their jobs are important. Many things can affect the staffing numbers and declaring of overtime, and sometimes a lot of people are released just one or two hours into it. It can cause a lot of chaos for families.

Chairperson Fox: Asked what are the requirements around calling in sick? If my shift is going to start at 8:00 in the morning, up to what time do I need to call in sick or is there no timeframe for calling in sick? **James Navarro:** Answered for the free staff that he is aware of, and each institution is slightly different, where he works the standard is 30 minutes prior to start of business.

Commissioner McCurdy: Asked if the agency had any call back procedures. Should an emergency occur in one of the facilities and employees are let go, what happens if the employees need to come back? **James Navarro:** Replied every institution is different. For him personally in IT, the only callbacks he gets are for recovery of lost information. When called back they are required to be in within two hours, and then if it takes 10 minutes or whatever, they have to charge a minimum of two hours overtime for that.

Commissioner Spurlock: Asked for clarification. When Mr. Navarro said that they can start working overtime but then be released an hour later, even under that circumstance, is there a minimum amount of overtime that has to be paid? Or do they get asked to stay and work a half hour more and they get that 30 minutes of overtime? **James Navarro:** Responded if they are called back for 10 minutes or any short amount of time, they have been instructed to charge two hours to payroll for that.

Matthew Gregory: Custody Officer at the Warm Springs Unit, and also on the board of AFSCME, stated his department is one that needs the Commission to look out for them. This issue might have stemmed from the EMC hearing where they lost a four-hour notice; they are exempt from a lot of the NAC, under law. If you give this to them, they are going to use it. Of course they have to staff during emergencies. What we need from the Commission is to be the gatekeepers and do the right thing in this case. Don't pass this and don't entertain it in the future because if you give them this tool, they're going to use and abuse it. They'll stop you in the gatehouse right before you're about to go and tell you no, you've got to come back and work, with no notice how you are supposed to get kids to school in the morning. Or if you're working dayshift, how will you pick kids up from school? This is just a power grab. As fellow State workers, the Commission needs to look out for the workers.

Margaret Harris: AFSCME board member representing the Medical Unit at the Northern Nevada Correctional Center advised employees can only bring enough medications for their shift. If someone has to work overtime with no notice, the employee has no time to go get medications. It is critical drugs like insulin, and it is not what is best for the patients and officers she cares for.

Stephanie Parker: AFSCME member with the Department of Public Safety shared her concerns for this unnecessary regulation change. She has a medical condition that does not cause absenteeism; however, she does have appointments with specialists that are difficult to get in to see, and some are at quite a distance where she actually has to travel. So for her to get notice at the end of a shift that now she needs to stay for four additional hours means that she has to miss that appointment to regulate medications. To give somebody an arbitrary regulation and tool that would require employees to cancel and reschedule appointments would most likely negatively impact her physical health which would then impede her ability to show up to work on a regular basis. If her health were jeopardized for this reason, it would result in absences and significantly increase her healthcare expenses to address the issues. Public service by its nature always affects public health, safety or welfare. This language is so broad that it is easily subject to being misused and affects State employees that are going to school and have to work more than one job and single parents that have young children. She asked the Commission to consider that this language is not necessary and is something that should be worked out by agencies themselves. The provision for unpredictable emergencies already exists in the language to meet the needs of state agencies.

Chairperson Fox: Asked what would be the definition of an unpredictable emergency. **Stephanie Parker:** Replied it would be a disaster that is already covered in the statute. If she's actually responsible for scheduling, she needs to ensure that she's scheduling people appropriately and doing her forecast. For any emergency that would typically arise you have State workers that are willing to work as long as it's not abused. **Chairperson Fox:** Asked would a riot in a prison setting be considered an unpredictable emergency? **Stephanie Parker:** Responded absolutely, and those people are there to actually support and to protect fellow State employees.

Commissioner McCurdy: One of the common themes is a significant concern for abuse or misuse of the regulation. What is the approval level when it is determined that overtime is required? Does it go high enough so that employees would feel comfortable that it is going to eliminate that opportunity for misuse by the first-line supervisor? **Stephanie Parker:** Replied one of her main concerns is that the language is so vague that it does not require justification to certain levels to ensure that it is not being abused arbitrarily; it also doesn't keep in mind budgets. If they're actually forecasting what the needs are and if everyone is sharing that at the highest level so that it can be determined that there are additional needs that need to be addressed sooner rather than later so that they are not unfairly impacting our state employees and their families.

Commissioner Spurlock: Asked if there are minimum staffing levels defined by policy, Legislature, or the federal government. **Matthew Gregory:** Answered each of their institutions have mandated minimum staffing levels and it varies according to the events and activities that are going on during the day. For the youth prisons and correctional centers, they have federally mandated minimum staffing levels, but the adult ones aren't covered under the PREA guidelines. As far as the minimum level of staffing, it is the bare minimum that they can get away with; it's dangerous. The minimum staffing levels are too small; he is the entire staff of his unit with 168 inmates. **Commissioner Spurlock:** Said there was an example given where somebody was stopped at the gate and told you can't go, we need you, you have to work overtime. And the alternative to that, according to Mr. Navarro, is to have somebody drive 90 minutes away to get there. Isn't there exposure? Aren't they deliberately undercutting the minimum staffing if they let that person go home and then wait 90 minutes or more for somebody else to show up? Aren't they facing liability or risk in that scenario? **Matthew Gregory:** Answered yes, very much so. Many times when overtime is needed, they do it on a volunteer basis before they move to the mandatory lists; they all take safety and security seriously. It's their job, it's what they do. When it comes down to being able to cut somebody, the State has an interest in making sure that they meet this, but it really revolves around that Administration waits until their relief comes in to build their shift roster an hour before their shift ends. That's when the overtime starts getting mandated because they're not doing the paperwork that they could be doing during the night or during the shift in order to staff properly for the oncoming shift.

Commissioner Spurlock: Does management fully well know hours in advance that they're going to be understaffed for a subsequent shift? **Matthew Gregory:** Answered yes they do. **Commissioner Spurlock:** Asked how/why he believed they had that information. **Matthew Gregory:** Replied they have a computer system that builds the roster for who's supposed to be there and a set schedule and people generally call in sick so they will see little tags up on their computer screen. But they won't handle the next shift's shift-building roster until that shift comes on even though they'll know hours in advance when workers call in sick, unless it's an emergency. The workers see this as a power grab from the Department. It seems like they really just want the ability to control workers' lives as much as possible.

Commissioner McCurdy: Asked again what was the minimum call-in time for calling in sick. **Matthew Gregory:** Answered that at his site they haven't been given a minimum time for calling in sick. Each prison has a warden and they have different rules and operating procedures.

Chairperson Fox: Asked what does NAC say in terms of calling in sick? Is there a minimum amount of time or does it just say that employees have the right to call in sick? **Carrie Hughes:** Replied call-ins for sick leave are left to the discretion of the agencies and their policies. It isn't set in regulation. **Chairperson Fox:** Stated she believed that management would encourage the employee who is going to call in sick to provide as much lead time as possible to their supervisor. That's just the nature of a good business practice.

Commissioner McCurdy: Stated the minimum staffing is their minimum or it wouldn't include any floaters to compensate for potential sick time. If someone does call in sick, since there's no minimum requirement of a set number of hours for a person to call in sick, an opportunity could arise where a supervisor, in order to meet minimum staffing, is unable to provide four hours advance notice to someone who is required to work overtime. **Matthew Gregory:** Replied what really takes place in the institutions when people call in sick, they obviously try to give the most amount of notice possible hours in advance. The institution will ask for volunteers and if necessary, go to mandatories. Prior to the four-hour notice being put in place, staff would get stopped at the gatehouse. This four hours being so new, it's respectful, it's polite, it's doable. All that it would require would be the Administration to start the next roster instead of waiting until their relief comes on and build the roster the way they want to. Then if they need to start filling it because there are some call-ins or they just don't have the staff which is most of the time. They don't really run on minimum; the schedules are padded. If they fall below minimum, they just lock everything down. But usually they will have three or four extra people per shift to cover. Minimum staffing is truly minimum. They wouldn't have enough without going below minimum to even do a hospital run should something happen.

Commissioner Mauger: Asked if AFSCME had offered any alternatives to help alleviate this situation. There is so much conflict over this and there's two ways to go. You can put this on hold and go back to the table and start talking to see where both parties

can get to a middle ground on this situation; there's also future bargaining and this would be a subject for collective bargaining. But in the meantime, to alleviate what he considers a safety situation, were there alternatives offered and did management adhere to any of it or did they just put in what they felt was necessary? Based on the amount of conflict, the involved parties at Nevada Corrections Prison System should sit down again and try to rectify it. When it comes to collective bargaining, a bad contract is better than no contract because you can build on it to resolve the conflict. Did AFSCME discuss alternatives and why doesn't AFSCME go back to the table and see if they can reach an alternative, get it in writing and solidify it? **Paul Lunkwitz:** President of the Fraternal Order of Police, Lodge 21 and Correctional Officer at High Desert State Prison stated there is a definition for an emergency situation in the Department of Corrections' Administrative Regulations: "Any significant disruption or normal facility or agency procedure, policy or activity caused by riot, escape, fire, natural disaster, employee action or any other serious incident," which is already covered in NAC 284.242. At High Desert State Prison, there have been several suggestions made by staff to the Administration and that has resulted in a higher yield of volunteers such as having volunteer lists generated a week in advance so people can sign up and be hired to fill those spots in advance, that wasn't being done before. But the notice in terms of mandatory overtime is still not followed at High Desert State Prison.

Commissioner Mauger: Repeated he was looking at this from a safety standpoint. Are there issues with the mandatory overtime? Working extra hours causes the workers stress. It sounded like they resolved one issue that's workable, but they haven't resolved the mandatory overtime. **Paul Lunkwitz:** Responded there has been no effort on the Department's part to change the approach to mandatory overtime. At High Desert they still do not make attempts when they know they need overtime because they don't start doing the roster until an hour before the shift; that's when the primary hiring of both volunteer and mandatory overtime starts. **Commissioner Mauger:** Stated the alternative is to hire more employees, but that's not going to happen. There needs to be a resolution; it's a safety issue and he completely supports that and understands the problem.

Detelin Georgiev: AFSCME representative and Correctional Officer at High Desert State Prison stated the solution is simple. All the Administration needs to do is just pre-hire. They can pre-hire people a day to a week ahead, and if they don't need all those pre-hire people, they just cancel them. Other state agencies utilize that system and it works. **Commissioner Mauger:** Asked was this alternative discussed with Administration? **Detelin Georgiev:** Replied it has been done on a random basis. **Commissioner Mauger:** Asked did anybody buy into it? **Detelin Georgiev:** Answered it was done, but not to the extent to fully cover the shifts. **Commissioner Mauger:** Asked was it workable? **Detelin Georgiev:** Answered yes. **Commissioner Mauger:** Stated at least it was an alternative, something he hadn't heard before.

Chairperson Fox: Asked the audience if there were any individuals from the management side of the house that wanted to come forward and speak to this proposed regulation change. She wanted to make sure that the Commission does a proper vetting of this issue.

James Ferber: Administrative Lieutenant at High Desert State Prison stated he did not agree with Officer Lunkwitz who shared that Administration hadn't done anything to try and alleviate it; in fact, they have adjusted the supervisor/sergeant schedules. It used to be where they would come in an hour before the start of their shift. They have since reversed that so that they come in seven hours before the start of their shift so that they can prepare their rosters and hire any overtime that is needed and post their shift, and then they get off the hour after the shift starts. For instance, the 5:00 to 1:00 shift sergeant will come in at 6:00 a.m. to prepare for the 1:00 to 9:00 swing shift and has that whole amount of time. When the prior shift posts there's a list that has a voluntary overtime section where the officers can sign up for, and at the bottom of that list is a mandatory list that lists, per the AR, up to 15 individuals. They're supposed to initial and the supervisor notifies them that they are on the mandatory list at the beginning of their shift which is eight hours prior. So, with what Officer Georgiev was just saying that they could notify them and then pre-hire; we tried that with the mandatory list and then the officers were saying if we do that and we make plans, cancel any of our plans because we're on the mandatory list, so that wasn't working. There is an impasse or a problem with trying to figure out a solution that's workable for everyone. With adjusting the supervisors' schedules and allowing them to notify the officers within the four hours that's mandatory, they are meeting the current regulation, but then when they have people that call in at the last minute, and there is up to half an hour after the beginning of the shift that they can call in sick, that's when they run into the problems of having to mandate people at the last minute.

Commissioner McCurdy: Asked if there was an issue with sick time at his facility. **James Ferber:** Answered yes and no; sometimes there's more call-ins than others. It can be a problem.

Commissioner Spurlock: Noted that there were people in the audience raising their hands to speak. He said he didn't want conversations going on between members of the public, so if people want to speak, they'll have to do it sequentially. They can't have the dialogues back and forth.

Paul Lunkwitz: Stated per NRS 288.150 the total number of hours worked required of an employee on each workday is a mandatory bargaining subject. By amending this requirement of NAC 284.242 to not include agencies such as NDOC you are changing the conditions under which an NDOC correctional officer can be required to work additional hours on any given workday. This requirement should be unchanged until negotiations can take place. Eliminating this requirement will adversely impact NDOC officers and their families. With this requirement currently in place, High Desert State Prison makes no effort to give its officers four-hours' notice before requiring them to work overtime. Although there have been efforts made to alleviate the need for mandatory overtime, NDOC is aware of this requirement as evidenced by Deputy Director Wickham's email dated October 25, 2017. This requirement has been ignored in the past and they are only recently making changes to try to alleviate the need for mandatory overtime. At times, High Desert State Prison has failed to follow its own regulations on required overtime by ignoring the mandatory list completely and hiring officers who were not even on the mandatory list. NDOC and their counsel has continually represented NDOC cannot give four hours' notice when officers call off sick an hour before the shift starts. In raising this defense, they are asking workers to ignore the other seven hours prior to the start of a shift that officers do indeed call in sick. This is a bad faith effort on their part; they are presenting an inaccurate picture of how overtime is handled and how sick leave is reported. If a shift roster is rendered the day before it is supposed to occur, and there are six posts that need to be filled by overtime, generally they will be filled by volunteers. The next day there may be three volunteers on the list in case there are sick calls. If the supervisor responsible for staffing the shift in question has already received six call outs, that means that three additional officers will be required to work mandatory overtime. Does the supervisor update the roster at this point and communicate to the officers that the will be required to stay? No; they wait until an hour before the shift and begin calling people for required mandatory overtime. This is the standard practice that is followed at High Desert State Prison; this is where NDOC's argument fails. They can give notice to those officers who are to be mandated for overtime, but they do not make an honest attempt to communicate this to officers.

Removing the application of NAC 284.242 from NDOC is not the change that needs to be made; High Desert State Prison does not follow it now. The necessary changes are in the way NDOC approaches mandatory overtime. If High Desert State Prison was acting in good faith, they would monitor the roster for the upcoming shift and hire overtime as sick calls occur. Unfortunately, NDOC has chosen to place all their efforts into projecting to various hearing officers, committees and commissions that sick leave is a primary reason for mandatory overtime; the reality is that short staffing is the primary reason for mandatory overtime that if the four-hour requirement prevents them from hiring mandatory overtime for a particular shift, they can ask officers to volunteer. NDOC can and has shut down positions to avoid overtime. During periods of extreme staff shortages at High Desert State Prison, NDOC enacted roaming unit lockdowns when the upper Administration did not want a high volume of overtime. If the State of Nevada is concerned with the well-being of the officers from NDOC, there should be no issue locking down units and shutting down their positions so that officers can attend to the needs of their families. If an officer is a single parent and has to pick up their child within an hour of getting off work, how are they supposed to make arrangements for their child to be picked up if they are mandated on their way to the parking lot? More importantly, what happens to the child? If a child is left alone at school and gets taken by Division of Family Services, the officer can then face child neglect charges. Asking officers to choose between their family and job is extremely unfair. It seems clear that the intent of NAC 284.242 is to protect employees against the unreasonable application of required overtime that could severely disrupt an employee's family obligations. I humbly stand before you requesting that you afford the officers of NDOC the dignity to have the reasonable time period to make arrangements for their families if they are to be required to work overtime.

Commissioner Spurlock: Asked Lieutenant Ferber if he had a response to Mr. Lunkwitz's comments. **James Ferber:** Answered in the affirmative and introduced Senior Officer Robert Ashcraft who fills in at the sergeant's desk posting the shift at times. When they get call-ins, he fills them as they come in; they are not waiting until the end of the shift.

Robert Ashcraft: Confirmed they do fill them as they go at times; it depends on what's going on and what's in the institution. They do go off the overtime volunteer list first which makes it difficult to get to the mandated list; there should be some changes made in that. When you're going off of that it doesn't allow the time to get there. What they want to do is try to alleviate the overtime; they don't plan or prepare for it. They are attempting to be proactive, but they are not following through.

James Ferber: Added that when the volunteer list is exhausted, before they go to the mandatory list, generally it's the practice to call for volunteers to see if anybody wants to volunteer before they have to go to the mandatory list. And the current or the upcoming administrative regulation covering overtime is being revised to say is that if you volunteer for overtime you can have that count as your mandatory, so that's another step that the Department is trying to make to help alleviate being mandated on short notice, something that High Desert has been trying out.

Commissioner McCurdy: Asked when he's calling, are these employees already on their day off or is he asking existing people who are on shift to stay an additional two to four hours? **Robert Ashcraft:** Replied they've adjusted it to voluntary overtime. They have a list in their Chronos system so they can go in there and look, but they have to put the roster together first. While they are putting the roster together, they're getting call-ins, so until they get the roster together they don't know what spots to fill. Creating

that roster takes time so by the time they do go through the mandatory list, they call people at home depending on what post they want because a lot of people won't work if they don't want a certain post. By the time they get to it, they are usually far below the four-hour limit. Usually it's about an hour to a half-hour before shift that they can get to the mandatory list.

Commissioner McCurdy: Asked if they are calling employees who are at home. **Robert Ashcraft:** Responded either at home or at work, depending on who volunteered and where they are. The voluntary list has exploded. It has helped out quite a bit, but it has not fixed the problem. Today's testimony from officers, free staff and representatives so far is 100 percent correct. Correctional officers are human beings; they all have lives. That includes family and personal needs like medical, childcare, school or family obligations. Some officers are single parents and that makes these needs and responsibilities even harder to accomplish. They all realize that they can be forced to work on short notice, but NAC 284.242 defines that short notice as four hours. And this has been put in place for a reason so they have time to make arrangements to handle responsibilities. NDOC has always put the needs of the Department first but has failed miserably at looking at the needs of the officers. That's a big problem when it comes to retaining officers. As a senior correctional officer at High Desert State Prison for over 20 years, he has represented correctional officers and free staff at interviews and hearings. During these times the Department didn't exhaust all available options. They made few, if any, attempts to work with officers or even attempt to give any reasonable notice. Officers on mandatory lists can be held hostage for months. They tell you what number you are on the list with no guarantees of being required to work overtime, and you can be on this lists for months, not allowing you to make family or personal arrangements without the threat of being mandated. He had the responsibilities of posting shifts and understood about the administrative code, administrative regulations and operational procedures that were put in place for this reason. Despite initiating a volunteer list which has taken off and also changed times from the officers posts from one hour before the shift to seven hours before the start of the shift, there's no serious attempt to give the four-hour notice. The standard practice is approximately one hour or less right now. What the Department of Corrections has not done is to address the lack of staffing or as they call it, minimum staffing, and go to legislatively approved full staffing. It's always set at minimum staffing, so once you get a call-off you're automatically below. If it was at full staffing there would not be an issue. Full staffing would provide more safety for the officers and more posts to pull from which would reduce the need to hire overtime and the need to mandatory officers. NDOC has made no attempt to look at the needs of the employee; they are only attempting to address their own needs. The officers should not have to choose between family and job. Taking away the four-hour notice is not what's in the best interest of the officer or the Department of Corrections or in addressing retention of the employee. Addressing the real issues is and he hopes the Commission will agree and afford the officers of NDOC the four hours, a reasonable time period, to make any arrangements for their families and fulfill their duties to NDOC of being mandated to work overtime.

Commissioner Mauger: Asked if the change as proposed would further compound the issue. **Paul Lunkwitz:** Answered yes; it would further compound the issues they are having with staff retention and the greatest needs of staffing when they have the highest rate of mandatory overtime. When people have families and they get told right before the shift is over or on their way to the parking lot, you're putting them in a really bad position to choose their children or their job. If you remove this from the requirements that NDOC has to use, they are going to run into that situation, and there's discipline hanging over their heads as well. **Commissioner Mauger:** Asked if they didn't have this change and maintained the status quo, would that be at least until collective bargaining? **Paul Lunkwitz:** Answered in his opinion that is by far the best choice.

James Ferber: Stated this causes a severe hardship on the facilities themselves. Yes, they try and notify everybody as soon as possible, but when you have somebody that calls in five minutes before the end of the shift and you're already at your minimum staffing, you have nowhere else to pull anybody from; you're going to have to grab somebody that's coming out the gate that's headed towards the gatehouse to leave. Generally, when he posted shifts he would try and find somebody with the least seniority. That's the fairest thing that he could think of. Was it perfect? No. They are never going to find a perfect system, but the way it stands now, they end up having to shut down areas of the facility which impacts the inmates and causes them stress which then radiates out towards the officers causing a further safety issue.

Robert Ashcraft: Added maybe they should address that issue as opposed to the issue of when you're allowed to call off, what time you're allowed to call off. When employees call off an hour before or a half hour after, that does put them in a difficult position. Maybe they should address that issue.

Chairperson Fox: Stated the issue before the Commission is changes to Nevada Administrative Code 284.242. There's a much larger issue in terms of proper staffing levels within the Department of Corrections. There are a lot of disgruntled employees sitting in this audience in northern Nevada and that indicates that both management and employees need to roll up their sleeves and have a very focused conversation about staffing, calling in sick, amount of time of voluntary overtime as compared to mandatory, to hopefully get at some better solutions. She could feel the frustration amongst employees that feel like they're being further handcuffed if there's not some minimum amount of time before overtime is demanded or mandated. That's the much larger issue going on, but the issue before the Commission is the change in NAC 284.242. She asked that public comments stay focused on the

change in NAC 284.242. She does understand there is a larger issue and frustration and concern, and she is not belittling that or saying that's not going on. They need to stay focused on 284.242 in terms of this issue before the Commission and to approve or not approve.

Michael Martinez: Correctional Officer at High Desert State Prison stated it's important to have to have this four-hour notice. The way it is now they don't give the four-hour notice, and even if they did, there's no opportunity to make contact because all the phones from the units have been disconnected. There is no way to make an outside call except from the infirmary or in the control room. Right now employees are given 30 minutes or less notification, and they have to walk to their units and then they have to wait to get relieved to make phone calls to their others. This has been a struggle. It's been chaotic with mandating and people volunteering. It's frustrating. The policy is there, but it's not being followed. Some employees are on the mandated list and are being constantly mandated. Every three days, every four days, once every week, once every three days; it's repetitive. If you take this away, it's only going to make the supervisors more empowered to either choose the people that they like, or they choose the people that they don't like to put in positions where they want them. In 2017, he documented that he was mandated outside the policy and was not given four-hour notice on three occasions.

Sherri Kassebaum: President of AFSCME in the south and sergeant at Southern Desert Correctional Center commented NDOC could resolve the mandated problem quite easily by calling people that night for the next shift, and when people come on shift, let them know they are first in the line for mandated overtime. It's not that hard to give a four-hour notice; they have all shift to figure out if they need to swap a shift with another employee or make arrangements by getting a phone call from the sergeants to do so. Administration should be doing what's best for their employees instead of what's best for them; there is frustration and anger on both sides. Officers need four hours of time to talk to their families and make arrangements. This subject should be waiting for collective bargaining to do what's best for everybody.

Kerry Hunter: Senior Corrections Officer clarified there is a misconception; employees are not getting mandated four hours, two hours. It's eight hours. If you start at 1:00 in the afternoon, you're expected to be home around 9:00. With the 30 to 40-minute drive that's 9:45 or 10:00. When you've been mandated last minute, your phones do not work, those have been turned off. When they mandate you, sometimes it's for something small. That's a quick four hours, three hours, no big deal; they all do it. The problem lies where you are mandated eight hours, didn't tell your family and the threat of retaliation or being put on administrative leave is hanging over your head. It's hard to make that choice. You have almost 400 officers and supervisors on the yard between all shifts that have no problem doing overtime. About a year ago when the Legislature said we had to cut overtime by any means, we did have rolling blackouts. Every sergeant and supervisor that was not essential to being at the desk to answer the phone walked in the yard helping out. If they were doing that on a daily basis that would alleviate a lot of that mandate. He hoped the Commission would consider dismissing this outright or putting it off until after collective bargaining. It's a safety net for employees so they can make proper arrangements for family, school and appointments and the four hours is reasonable and workable. There is a bigger issue with staffing, but that's something different. This right now is a step in the right direction and removing it would be a step in the wrong.

Kevin Ranft: Labor representative with AFSCME Local 4041 stated the issue in front of the Commission today on the proposed change to NAC 284.242 really impacts the Nevada Department of Corrections. The bigger issue in the proposed regulation has unintended consequences by creating unnecessary overtime and places additional unnecessary strain on officers throughout the State. This could lead to additional retainment issues for NDOC. NDOC has created a retainment issue by the way they treat their staff, officers and employees statewide; this is a matter of respect and dignity, trust and appreciation. NDOC has a long way to go to create an environment that is healthy to work in, in essence creating a prison environment that has the elements of security that NDOC is looking for. NDOC's other governing body, the Board of Prison Commissioners, made up of the Governor, the Secretary of State and the Attorney General, are given the authority to discuss and recommend staff to the Legislature. He believed that the change to NAC 284.242 is a management issue for NDOC Administration and management to deal with internally. Further, the union and employees of the Department need to have a voice.

NDOC needs to create a process that works to create a safe and effective work environment. If this passes today, NDOC or other agencies have no need for the union or the employees' input; this would give them the easy way out. They know that that's not going to be the case. Mandatory bargaining is up and coming; it's already passed the Legislature. AFSCME would like to wait and create an environment where both sides could work together to get to where everyone needs to be on this issue. The current NAC already has a failsafe – emergency – however NDOC often chooses not to declare that emergency. NDOC often will put the inmates into programs and not shut down the yards to keep operations status quo. The officers know they're working in a prison facility and that there could be mandatory overtime, but let's have a fair process to do that or let's shut down some of these programs and go back to minimum staffing levels that was created and approved by the Department. There's no consistency on minimum staffing levels or in the current policy that was created over a decade ago regarding mandatory overtime, AR 326. The policy is interpreted

inconsistently statewide. There is a new Director of the Department of Corrections and the Commission is considering making this change today without him even having an opportunity to really sit down and discuss this with his staff to ensure success of all parties. AFSCME Local 4041 strongly opposes the proposed change outlined in LCB File No. R019-19 Section 1 and respectfully asks the Commission to vote no.

Cameron Vandenberg: The Chief Deputy Attorney General said she felt an obligation to speak because she was the one that started all this and shares the same perspective as the Department of Corrections. She started this process long before collective bargaining was passed; it takes that much time to get to this point. She proposed this amendment that was originally on the September agenda and enlisted the help of the Division of Human Resource Management based on the fact that they were seeing multiple instances of officers refusing to work mandatory overtime, many cases not because they couldn't, but because they didn't want to or because they felt that it was an unlawful order making them do so without what they felt was the proper notice. Second, the unpredictable emergency exemption to the regulation is simply unworkable or realistic. It should not require a riot or fire or something like that in the prison setting. As Commissioner Mauger said this is a safety issue and they live in the reality of legally required minimum staffing. Short-staffing, needing more positions and some of those other things that have been discussed are great, but NDOC relies on the Legislature for more positions. NDOC has to staff the institutions and having only an unpredictable emergency be the way to avoid the four-hour notice is just not workable. Falling below minimum staffing and having to shut down the institution or having a safety issue is an emergency. Officers will call in sick and management does not have a crystal ball and are never going to be able to determine exactly how many positions they're going to need to staff. Even if they changed the requirement for when an officer would call in sick, in reality NDOC is not always going to abide by that, not because they're necessarily refusing to, but sometimes an officer may not know that they need to call in sick until they wake up a little bit before they're going to go into work, or maybe their child throws up on the way to daycare. Employees are not always going to be able to meet a requirement even if they move it back. What to do then? Sure, four hours' notice would be nice, but they had an officer testify that he wouldn't have access to a phone then either. At the end of their shift, if officers call in at the last minute they've got to staff that position. Overtime is a condition of the job of a correctional officer; it's in the class specs, it's in the job announcement, it's in the work performance standards, and officers know that's a condition of their employment when they take this job. Of course mandatory overtime does impact people, their lives and their families and she doesn't understand why more people don't volunteer for overtime when they know they can, when they know they don't have plans, a doctor's appointment or a childcare issue. Then they don't have to worry about it. If their name is nearing the top of the mandatory overtime list, a reasonable officer would make arrangements knowing that more likely than not they will be mandated if they don't want to just go ahead and volunteer. The testimony today seemed to try to make NDOC out to be this uncaring, horrible agency that doesn't care about their employees and I don't believe that to be true; NDOC is trying very hard to meet their mission and it is not easy. NDOC is not always going to be able to give four hours' notice, but they are trying their best. Maybe the answer is to change the exception to the four-hour notice to something a little bit more workable, a little bit more reasonable than an unpredictable emergency as defined by the folks that have testified here. Having an institution not properly staffed is an emergency and it's not fair to say that it's predictable.

Commissioner Mauger: Stated Ms. Vandenberg said she didn't work at NDOC and those who testified do work there, so there is a marked difference between what she is saying and what employees are saying here because she doesn't work in that environment.

Commissioner Spurlock: Added the number one thing that is needed is communication. It sounds like a lot of this will be definitely covered in collective bargaining because everyone is going to decide how important this is or isn't to them. Is the comment that was made earlier true that management has much more ability than they'll admit much earlier in the shift and can be managing if they were working on it from the beginning of the shift and not waiting too long into the shift? Let's say mandated staffing is 12. Federal requirement, your own requirement, that's been determined for safety. You have to have 12, you only have 11, and somebody is walking out of the guardhouse. You're going to have to pull that person because you can't call somebody else that has to drive 90 minutes away because if you do that, you're deliberately endangering the public, the prison population and the remaining guards. NDOC ultimately has to do what they have to do. Barring everything else, do you think there could be greater effort by management earlier in the shift that would help them get a better handle on this and not have to lead to as many last minute attempts?

Cameron Vandenberg: Replied somebody mentioned NDOC does go through the voluntary list first and that is often occurring throughout that shift before they get to the mandatory list. Unfortunately what happens then, based on her understanding of that testimony, is that when they get to the mandatory list they're usually pretty close towards the end of it because they've exhausted the volunteers. But every single shift is different, and it would be better to defer to the higher-ups. High Desert has made some changes, so they are staffing the next shift earlier rather than an hour before. They have shift lieutenants and sergeants coming in earlier to start that process. There is a list that the officers initial when they come on duty so they can see where their name is on the list, so employees have an idea how likely they are to be mandated. Some conversations could potentially be had at that point during muster.

Deborah Hinds: Department of Health and Human Services employee spoke in support of her fellow brothers and sisters who work for NDOC. Working with adult mental health, there are several instances where officers have to travel with inmates to provide them psychiatric care. She is concerned for their safety, for their families, and for the outpatient and inpatient staff. If this regulation passes it could impact patient care.

Commissioner Mauger: Commented there's no doubt to the magnitude of the issues currently going on at NDOC. There is no doubt this change would further compound the problem and believes the Commission should leave this issue to collective bargaining and stay out of it.

Chairperson Fox: Responded this is best handled via collective bargaining and that process is beginning right now. She hoped that management would listen to the concerns regarding staffing levels and what they need to have happen to find a solution for the situation. Both sides want to get this fixed as it is in everyone's best interest.

MOTION:	Moved to reject the proposed regulation changes proposed in Agenda Item VI-C, LCB File No. R019-19, Section 1, NAC 284.242 Overtime: Authorization.
BY:	Commissioner Mauger
SECOND:	Commissioner McCurdy
VOTE:	The vote was unanimous in favor of the motion.

Chairperson Fox: Thanked everyone in the audience in both northern and southern Nevada. This is a passionate issue and she is hopeful with the new Director of Corrections that management and key employee staff can come up with an approach that meets the needs of the Department of Corrections and the interests of the majority of the employee concerns.

VII. REGULATIONS THAT WERE NOT APPROVED BY SUBCOMMITTEE TO REVIEW REGULATIONS OR LEGISLATIVE COMMISSION - Informational Item

VIII. REPORT OF UNCONTESTED CLASSIFICATION PLAN CHANGES NOT REQUIRING PERSONNEL COMMISSION APPROVAL PER NRS 284.160 - Informational Item

Posting: #1-20
9.603 Facility Manager/Supervisor Series
Posting: #2-20
5.222 Educator Licensing Analyst Series (formerly known as Teaching Licensing Analyst)

IX. DISCUSSION AND ANNOUNCEMENT OF DATES FOR UPCOMING MEETINGS

Chairperson Fox: Confirmed the next meeting is March 6, 2020. They Commission is still waiting to hear if Governor Sisolak will appoint an alternate Commissioner to be a regular Commissioner, and the three alternate Commissioners should be aware one of them might get bumped up.

X. COMMISSION COMMENTS

Commissioner Mauger: Shared this would be his last meeting. He didn't know what it was that allowed him to be appointed to the Board, but whatever it was, it has since passed. He is just a blue-collar guy in a white-collar position. He thanked Peter Long and his staff along with his fellow Commissioners for all their professionalism and support in helping him during his tenure on the Commission. He thanked Governor Sandoval and the State for allowing him to give back to the great people of Nevada.

Chairperson Fox: Thanked Commissioner Mauger and said they will miss his perspective. He kept members aware of employee concerns and labor issues. She wished him all the best in his next chapter.

Commissioner Spurlock: Added he and Commissioner Mauger were polar opposites; Commissioner Mauger was on the union side of the table and Commissioner Spurlock was on the HR side, but no matter what, Commissioner Mauger was always 100% respectful of different viewpoints. There was much they had in common on basic rights of the employees and due process and will always admire him for sticking up for the employee that way.

XI. PUBLIC COMMENT

Chairperson Fox: Advised that no vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken under NRS 241.020. She asked if there were any public comments; there were none.

XII. ADJOURNMENT

Chairperson Fox: Thanked everyone, wished them a healthy, happy, and safe holiday season, and adjourned the meeting.