

**PERSONNEL COMMISSION
DECEMBER 1, 2006 MEETING MINUTES**

**Indicates agenda items that were voted on by the Personnel Commission.*

**MEMO PERD #02/07
January 4, 2007**

I. Call To Order - 9:00 a.m.

Commissioner David Sánchez called the meeting to order at 9:01 a.m., December 1, 2006, on behalf of Chairman Claudette Enus who would be approximately one hour late, at the Nevada Department of Transportation, Building B Training Room, 123 East Washington Avenue, Las Vegas, and the Nevada Department of Transportation, Room 301, 1263 S. Stewart Street, Carson City via videoconferencing.

Present in Las Vegas: Chairman Claudette Enus and Commissioner David Sánchez

Present in Carson City: Commissioners Jack Eastwick and David Read; Director Jeanne Greene from the Department of Personnel; and Katie Armstrong, Deputy Attorney General, Attorney General's Office.

Member absent: Commissioner Katherine Fox

Director Greene introduced the Department's new legal representative from the Attorney General's Office, Deputy Attorney General, Katie Armstrong.

II. *Adoption of Agenda

Commissioner Eastwick's motion to adopt the agenda as presented was seconded by Commissioner Read and unanimously carried.

III. *Minutes of Previous Meeting

The August 11, 2006, meeting minutes previously distributed on October 16, 2006, had two minor corrections. Commissioner Read's motion to approve the minutes as corrected was seconded by Commissioner Eastwick and unanimously carried.

IV. *Pre-Employment Screening for Controlled Substances
Department of Corrections

Renee Travis, Personnel Analyst, Department of Personnel, explained that NRS 284.4066 authorizes agencies to designate positions affecting public safety and screen applicants prior to appointment for controlled substances. She explained the following positions in the Department of Corrections (NDOC) had been requested to be added to the list of those affecting public safety:

AGENCY	CLASS CODE	CLASS TITLE	BUDGET & POSITION CONTROL NUMBER
NDOC	9.485	Maintenance Repair Worker IV	ALL
	9.486	Maintenance Repair Worker III	
	9.487	Maintenance Repair Worker II	
	9.488	Maintenance Repair Worker I	

There being no questions or comments, Commissioner Eastwick's motion to approve Item IV was seconded by Commissioner Read and unanimously carried.

V. *Regulation Changes to Nevada Administrative Code, Chapter 284

A. Proposed for Permanent Adoption

Renee Travis, Personnel Analyst, Department of Personnel, explained the 12 proposed sections were approved by the Commission on August 11, 2006; however, the Legislative Commission did not approve them inclusively. There was objection to Sec. 5, Report of arrest or conviction, which had been redrafted for this meeting. The Legislative Counsel Bureau was in agreement with the revised language now before the Commission.

Commissioner Sánchez asked to address Sec. 5 first.

Sec. 5 NEW Report of arrest or conviction

This section is proposed by the Department of Personnel. Currently the requirement for an employee to report an arrest or conviction is limited to driving under the influence or unlawful acts involving a controlled substance as described in NAC 284.653.

Ms. Travis explained Sec. 5 received numerous comments and was redrafted during the August meeting before being adopted. Ms. Travis explained the regulation now excludes the reporting of traffic violations unless driving is an essential function of an individual's duties and disciplinary action is no longer addressed in the section.

There being no questions from the Commission, Commissioner Read's motion to adopt Sec. 5 was seconded by Commissioner Eastwick. At this time, persons in the north and south came forward to comment.

Gary Wolff, Business Agent, Nevada State Law Enforcement Officers' Association, Communication Workers of America, Local 9111, stated they were fine with subsection 1, but there was a huge problem with subsection 2 as it was highly discriminatory against certain employees, like those at the Highway Patrol Division and Departments of Transportation and Corrections. Mr. Wolff argued that employees in administrative positions also drive State vehicles on a regular basis. If it were for a conviction instead of an arrest of a traffic violation,

that would be different. But nine states don't even report traffic infractions. Mr. Wolff also stated they were concerned with the self-incrimination aspect of the subsection. Paying a traffic citation is not necessarily an admission of guilt as it just may not be practical to appear in court in person. Mr. Wolff stated that if the regulation passes, it needs to be equal for all individuals. Mr. Wolff stated he was concerned with having to report a traffic citation if it wasn't a criminal act and he felt that putting these things in employee records was a method of punishing employees if an agency wanted to.

Commissioner Eastwick asked Mr. Wolff if he was proposing that all employees report traffic citations. Mr. Wolff thought that was the agreement they had come to at the August meeting.

Director Jeanne Greene explained that the Commission did agree with Mr. Wolff's argument and adopted a regulation to require all employees to report traffic citations. However, the Legislative Commission did not agree and it was one of the reasons they rejected all of the regulations approved by the Commission in August.

Commissioner Eastwick asked whether legislators use State vehicles. Director Greene stated they do. She added that if you're in a State vehicle and receive a citation, it must be reported.

Mr. Wolff stated they didn't go to the Legislative Commission and complain, but they will if the section is adopted as presented.

Commissioner Sánchez asked what the impact would be in terms of the motion on the floor. Director Greene responded that the Legislative Commission would not have an issue with the way the section is currently drafted; however, if the language Mr. Wolff proposed was adopted, they would reject it again.

Commissioner Sánchez asked his fellow members if they should adopt a regulation that only focuses on particular groups of employees. Commissioners Eastwick and Read agreed it clearly singled out certain groups. Commissioner Read couldn't understand why the Legislative Commission disagreed with requiring all individuals to report traffic citations.

Ron Cuzze, President, Nevada State Law Enforcement Officers' Association was opposed to both subsections 1 and 2. They can understand some of the language in subsection 1 regarding a felony or DUI perhaps, but it's in violation of the 4th Amendment and due process. The State cannot make an individual self incriminate and that's exactly what the section would do. It not only targets employees of the NHP and NDOT, it affects 14 law enforcement agencies and the Department of Corrections. Every job has "perform other duties as assigned," so any employee with a driver's license could be driving a State vehicle. Either the State looks at the 4th Amendment and applies this equally across the board, or they're going to take it to court.

Mr. Cuzze recommended the State use DMV records instead as there are compact laws between all state DMV's, which require a DUI to be reported to Nevada. He asked if anyone had thought of that resource.

Commissioner Sánchez asked Director Greene what would happen if the Commission didn't adopt Sec. 5. Director Greene stated it would be business as it is today. Another option would be if they're comfortable with subsection 1, they could adopt that. Then the Department could return to the next meeting with subsection 2 after reaching a compromise with the unions.

Director Greene explained one of the reasons they wanted traffic citations reported is that last year the State paid out \$1.8 million in costs incurred through vehicle accidents. The Department was attempting to take a proactive remedial approach to try and address any problems that may occur.

Commissioner Sánchez asked whether his fellow members were comfortable with subsection 1 or should they send it back for further revision.

Commissioner Read's motion to reject Sec. 5 was seconded by Commissioner Eastwick.

Director Greene asked whether they were comfortable with subsection one. Commissioner Sánchez stated he was not. He suggested that perhaps subsection one could be incorporated into some suggestive language like Mr. Cuzze suggested. Director Greene asked for more clarification. Commissioner Sánchez replied it had to do with the self-incrimination argument.

Commissioner Read thought there was a big difference between arrest and conviction. Director Greene stated it was only felony arrests they wanted to know about. Commissioner Eastwick stated that if they're not convicted, then it's irrelevant. Director Greene argued that if an individual is arrested for felony child abuse and their position deals with children, the State needs to be aware of it in order to reassign the individual to another job until it goes through the court system.

Mr. Cuzze added that they have no objection to what Director Greene just stated, but suggested it be identified specifically in the regulation. Director Greene explained why that wouldn't be practical. Mr. Cuzze then suggested that "an arrest relevant to the employee's job function" be added.

There being no further comments, Commissioner Sánchez called for a vote on Commissioner Read's earlier motion to reject Sec. 5. It unanimously carried.

There was no discussion on Sections 1 through 4 below. See the minutes after Sec. 12 for the motion and decision.

Sec. 1 NEW Chapter 284 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2 NEW “Premises of the workplace” defined

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, defines the term “Premises of the workplace” as used in NAC 284. This language is an expansion of the language that was previously used in subsection 21 of NAC 284.650. This term is now being defined for use in other subsections of NAC 284.650 and sections of NAC 284.

Sec. 3 NEW “Sexual conduct” defined

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, defines the term “Sexual conduct” as used in NAC 284.

Sec. 4 NEW “Sexual harassment” defined

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, defines the term “Sexual harassment” as used in NAC 284.

There was no discussion on Sections 6 through 12 below.

Sec. 6 NAC 284.010 Definitions

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, incorporates the newly proposed definitions for “Premises of the workplace,” “Sexual conduct,” and “Sexual harassment” into the General Provisions of NAC 284.

Sec. 7 NAC 284.642 Suspensions

This amendment, proposed by the Department of Personnel, groups together disciplinary actions related to suspensions and demotions.

Sec. 8 NAC 284.646 Demotions and Dismissals

This amendment, proposed by the Department of Personnel, allows for immediate termination for certain offenses committed by an employee. These types of activities compromise the services provided by the State and place the State at an increased risk for legal and monetary claims. An employee dismissed as set forth in this section would be able to appeal the immediate termination and have his concerns heard by a hearings officer.

Sec. 9 NAC 284.650 Causes for disciplinary action

This amendment, proposed by the Department of Personnel, provides additional categories of serious infractions that are subject to disciplinary action. An appointing authority may, based on the facts of the situation, initiate progressive discipline under this section.

Sec. 10 NAC 284.653 Driving under the influence; unlawful acts involving controlled substance

This amendment, proposed by the Department of Personnel, allows for disciplinary action when the final charge is not driving under the influence or another offense for which driving under the influence is an element of the charge, e.g., destruction of property, failure to yield.

Additionally, the language in subsection 4 was removed and a new section is recommended to address the requirement for an employee to report the conviction of a misdemeanor or felony to his appointing authority.

Sec. 11 NAC 284.771 Sexual harassment

This amendment, proposed by the Department of Personnel, clarifies that employees may be terminated from employment if they commit sexual harassment even if it is a first time offense.

Sec. 12 NAC 284.884 Maximum allowable concentrations of alcohol in blood or breath of employee; confirmation of positive result on screening test of breath

This amendment, proposed by the Legal Division of the Legislative Counsel Bureau, incorporates the newly proposed section related to reporting of arrests, convictions, and traffic violations.

Commissioner Eastwick's motion to adopt Sections 1-4 and Sections 6-12 as presented was seconded by Commissioner Read and unanimously carried.

NOTE: Sec. 12 was adopted by the Commission in error and has been withdrawn. It should not have been considered as it proposed the incorporation of Sec. 5, Report of arrest or conviction, into NAC 284, which was rejected.

B. Proposed for Temporary Adoption

Renee Travis, Personnel Analyst, Department of Personnel, explained the regulations were proposed for temporary adoption and would be valid until November 1, 2007, unless they were proposed for permanent adoption before that date.

Sec. 1 NAC 284.361 Use of lists and consideration of eligible persons

This amendment, proposed by the Department of Personnel, expands the circumstances under which an appointing authority may designate specialized experience necessary to perform the duties of a position. The designation of specialized experience may occur, as permitted now, at the time of recruitment or when the appointing authority determines there will be such a need in the future. The specialized experience requirement is subject to approval by the Department of Personnel.

The intent of this amendment is to ensure that when a position's duties have changed over time and recruitment has not occurred, specialized experience requirements are recognized in the event of a layoff. Approved designations of specialized experience requested in anticipation of future vacancies will only be recognized if the request was received by the Department of Personnel at least 75 calendar days prior to the notification of layoff. This is the same time period referenced in subsection 1 of NAC 284.632 relating to the use of performance evaluation ratings when calculating seniority for layoffs. This amendment is intended to address the concerns of departments and employees as the Department of Personnel moves toward the development of classes and class series that are more broad and generic than in the past.

Commissioner Sánchez assumed the Department used the rule of five on eligibility lists. Director Greene stated that was correct for the most part; however, there are some lists that are waived and unranked.

There being no further comments, Commissioner Eastwick's motion to adopt Sec. 1 as presented was seconded by Commissioner Read and unanimously carried.

Sec. 2 NAC 284.386 Reinstatement of former permanent employee

The Department of Employment, Training and Rehabilitation has proposed that more flexibility be granted in order to reinstate former permanent employees whose last appointment was not one in which they gained permanent status. As a result, the Department of Personnel had proposed amending this section to remove the 2-year limitation for reinstatement of a former permanent employee. Additionally, it is the Department's intent to change the interpretation of this section to allow for an individual to be reinstated even if the most recent appointment held was not that of permanent status. This change allows State agencies to immediately fill vacancies with individuals with the knowledge, skills and abilities to perform the job. This is particularly important due to expected retirements within the next five to ten years.

Gary Wolff, Business Agent, Nevada State Law Enforcement Officers' Association, Communication Workers of America, Local 9111, stated they have a fundamental problem with reemployment beyond two years. Mr. Wolff felt that hiring lists should be used to promote those individuals who have studied instead of providing a short cut to bring back people as a favor or whatever to fill positions. Mr. Wolff stated that he worked for the Highway Patrol 10 years ago and could seek reemployment under this section; however, many things have changed since and it's not fair to someone who's been waiting on a list for promotional opportunities. They understand the concept, but it creates a morale problem for law enforcement.

Commissioner Sánchez asked whether this section would allow for individuals to bypass the normal hiring process. Director Greene replied that it does and stated that some lists are waived or unranked. The regulation currently allows for reemployment for up to two years.

Commissioner Eastwick asked how individuals are reemployed. Director Greene replied they're brought back on either a temporary or permanent basis.

Commissioner Read asked what the purpose was for amending the regulation. Director Greene replied one of the primary reasons is because there are so many retirements expected and some agencies want to reemploy individuals, primarily on a temporary basis. The retirement laws have an annual earnings cap and some agencies want to reemploy retirees every year until they reach the cap.

Commissioner Eastwick asked whether changing the section to apply to only temporary appointments would resolve Mr. Wolff's concerns. Director Greene replied they could limit permanent appointments to two years, and then provide for an open period for temporary appointments.

Mr. Wolff was concerned that there was no end to the time an individual could apply for reemployment. He was okay with the temporary appointments not being limited, but really felt that two years is a long enough period to return.

Ron Cuzze, President, Nevada State Law Enforcement Officers' Association, agreed with Mr. Wolff saying that reemployment of law enforcement personnel beyond two years is not practical due to POST requirements and the safety of the community. Director Greene clarified that all individuals seeking reemployment must meet the minimum qualifications and if POST is required, they would have to meet that also. Director Greene explained that reemployment is not a right given to a former employee, but an option for an appointing authority and they deserve some latitude to fill vacant positions.

9:43 a.m. - Chairman Enus joined the meeting.

Kimberley King, Personnel Officer, Department of Public Safety, agreed with Director Greene and stated this was only an option for management and they're still responsible for making good hiring decisions.

Commissioner Eastwick asked how POST certification was verified. Ms. King replied that if they were no longer POST certified, they would need to return to the academy. Ms. King explained there is a program for lateral transfers from other agencies to become POST certified.

Ms. Travis stated that the two-year period goes by rather quickly and a lot of institutional knowledge is going to be lost in the next 5 to 10 years. This amendment would ensure that the knowledge is not lost.

Commissioner Sánchez asked about the language regarding reemployment lists being removed. Director Greene stated that it currently stated an individual has one year of layoff rights and then two years of reinstatement rights. If this is passed, they would have unlimited reinstatement rights as all employees.

Mr. Wolff felt the amendment needed to be reworked to remove the open-ended reinstatement rights so the classified system isn't circumvented. Mr. Wolff reiterated that two years was enough time for an individual to return.

Commissioner Eastwick asked if there had been problems with the two-year period. Director Greene stated there weren't any statistics on the number of reinstatements; however, from her personal knowledge it doesn't occur very often but is a viable option for agencies.

Director Greene clarified that a retired employee could not come back without putting their pension on hold. She suggested the Commission could put a limit on permanent appointments and leave temporary appointments open-ended.

Chairman Enus asked for the activity under this regulation be monitored and if for some reason there becomes a necessity to oversee a particular agency that may be using it too often, the Department can determine why.

Mr. Cuzze stated they foresee the same problems with individuals on hiring lists not being promoted and this just gives agencies another tool to pass on them.

Director Greene clarified that this amendment would be adopted as temporary and the Commission would need to approve it a second time after July 1st, before it became permanent. She stated she could monitor and report at the next few meetings on the number of reinstatements by department and indicate how long the individual had been out of service before being reinstated.

Commissioner Eastwick asked whether it's been a recruiting problem and if retirements are starting to affect agencies. Director Greene replied it was currently affecting agencies and that's why the amendment was recommended.

Mr. Cuzze stated that even if it's temporary there should be something to address his concerns with bypassing promotional hiring lists as he felt many grievances would be filed.

Chairman Enus felt that Director Greene's monitoring of the regulation would provide them with the information they needed, and the opponents could address any concerns at the time it's brought before them for permanent adoption.

Commissioner Sánchez brought attention to subsection 4, regarding reinstatement to a similar class, saying it seemed to provide a safe guard. Director Greene stated that it did for similar classes but if it is the same class, no pre-approval is required. Commissioner Sánchez felt more comfortable having the Department pre-approve all reinstatements. Mr. Cuzze agreed. Director Greene stated they would be happy to do it if the Commission wanted. Chairman Enus asked if there would be any problems and Director Greene deferred to counsel. Katie Armstrong, Deputy Attorney General, stated she was comfortable with it. Director Greene stated she was comfortable with it but it does change current practice, so she asked for input from the agencies.

Phil Brittenham, Personnel Officer, Department of Motor Vehicles, stated he would support the change. Kareen Masters, Deputy Director, Administrative Services, Department of Health & Human Services suggested leaving the regulation unchanged, as every step added to the hiring process delays it. Ms. Masters stated the Welfare & Supportive Services Division has lost many individuals to retirement. Debra Olson, Director, Business Center North Personnel Services, University of Nevada, Reno, suggested an exception for Highway Patrol positions could be addressed. They didn't have a lot of reinstatements, but it would slow down the hiring process and she thought it would be burdensome to Director Greene.

Mr. Cuzze objected to singling out Highway Patrol and asked for the 17 Nevada law enforcement agencies, including University Police, to be included in the exception.

Ray Marshall, Personnel Manager, Department of Business & Industry, stated he likes this regulation but has thought the two-year period has been limiting; he supported the amendment as presented. To compromise, Mr. Marshall suggested having the Department pre-approve any reinstatements beyond the two-year period. He realized it was an additional burden on the Department, but felt it was important for them to examine individuals outside of that period.

Ruth Edsall, Personnel Officer, Department of Employment, Training & Rehabilitation, explained that she made the request to amend the regulation. They have IT employees with deep institutional knowledge who have retired and they use them in temporary and intermittent positions.

Ms. Edsall explained they come in and out of employment to service their systems and they're still able to draw their retirement. The amended language clarifies that if they had permanent status at some time in their State employment they could be reinstated even when their most recent appointment was temporary. Ms. Edsall supported opening up the reinstatement period, but no matter how the Commission decided on the term limit she urged them to broaden the language regarding permanent status. She supported the Department pre-approving reinstatement requests.

Chairman Enus asked Ms. Edsall what she thought of Mr. Marshall's compromise. Ms. Edsall replied it probably would address the concerns.

Marilyn Yezek, Human Resources Manager, Department of Transportation, stated they would be opposed to an additional level of approval and they're able to work with the regulation as it is currently.

Director Greene supported Mr. Marshall's suggestion to approve reinstatements outside the two-year period, and she stated they could be turned around in 24 hours.

After reaching a consensus, Commissioner Read's motion to adopt the changes to Sec. 2 adding the requirement for reinstatements beyond the two-year period to be pre-approved by the Department was seconded by Commissioner Sánchez and unanimously carried.

Sec. 3 NAC 284.611 Separation for physical, mental or emotional disorder

This amendment, proposed by the Department of Personnel, removes the two-year limitation to reinstatement as is consistent with the changes proposed to NAC 284.386.

Commissioner Sánchez asked how the two-year limitation related to this regulation. Ms. Travis stated it was only to be consistent with NAC 284.386 as subsection 4 refers to it.

There being no further discussion, Commissioner Sánchez's motion to adopt Sec. 3 was seconded by Commissioner Read and unanimously carried.

VI. *Approval of Class Specifications

Maintenance Repair Worker series

Tewolde Habtemicael, Personnel Analyst, Department of Personnel, explained the study added a duty statement requested by the Department of Corrections for positions that perform basic mechanical repairs and maintenance on pumps, valves, fans and other mechanical equipment. In addition, special requirements were added to reflect that positions in the Department of Corrections are subject to pre-employment screening for controlled substances and callback after work hours and callout on weekends and holidays. The changes would become effective December 1, 2006.

There being no questions or comments, Commissioner Sánchez's motion to approve Item VI as presented was seconded by Commissioner Eastwick and unanimously carried.

VII. *Approval of Occupational Group Study Revised Class Specifications

Fiscal Management & Staff Services occupational group

1. Subgroup: Financial

Financial Institutions/Mortgage Lending Examiner series

Brenda Harvey, Personnel Analyst, Department of Personnel, explained two primary program areas of the series were more clearly defined to include specific duties performed by incumbents in both the Financial Institutions and Mortgage Lending Divisions in the Department of Business & Industry. The minimum qualifications were revised to align with other professional series in the occupational group.

Commissioner Sánchez asked about the driver's license or equivalent mobility requirement. Ms. Harvey responded that equivalent mobility could be several things including public transportation.

There being no further comments, Commissioner Read's motion to approve Item VII-1 as presented was seconded by Commissioner Eastwick and unanimously carried.

2. Subgroup: Public Information

Graphic Designer series

Vivian Spiker, Personnel Analyst, Department of Personnel, explained the Department recommends minor changes to the Graphic Designer series. The level designations were changed to Roman numerals for consistency in the State's classification plan. Additionally, the duty statements and knowledge, skills and abilities were revised to include current computerized processes.

Currently, the minimum qualifications require a bachelor's degree in graphic design or related field and experience performing design work created freehand or with computer graphics software. Based on input from subject matter experts, it is recommended the design experience be with computer graphics software as freehand graphic design has become rare and outdated.

There being no questions or comments, Commissioner Eastwick's motion to approve Item VII-2 was seconded by Commissioner Read and unanimously carried.

Chairman Enus called for a break at 10:25 a.m. and reconvened at 10:35 a.m.

VIII. *Individual Classification Appeals

- A. Jennifer Dunaway and Lisa Jones, Health Facilities Surveyor IV's
Bureau of Licensure and Certification, Health Division
Department of Health & Human Services

Lisa Jones introduced herself and Jennifer Dunaway stating they were requesting reclassification to Health Program Manager II, grade 39. Ms. Jones explained her supervisor, Pam Graham, thought the level of responsibility exceeds that of other health staff at grade 39. Ms. Jones stated they had thought of requesting a new level for the Health Facilities Surveyor (HFS) series, but decided to pursue the Health Program Manager II class. The funding for grade 39 was incorporated in their 06/07 biennium budget and the positions are funded at a grade 39 for the 08/09 budget. Ms. Jones stated that the Health Division supported their upgrade. There were two issues regarding the basis of denial that Ms. Jones addressed. The first was that the Health Program Manager (HPM) series only applies to bureaus that provide direct health care services. Ms. Jones explained the duties they perform are all identified in the duty statements described in the HPM concepts. Ms. Jones stated the difference between the two classes was dispute resolution. Five HPM II's at the Health Division are working in public health preparedness, chronic disease prevention, minority health, Women, Infants & Children (WIC), and the Bureau of Alcohol & Drug Abuse (BADA). These programs involve an oversight function by HPM's to assure the entities receiving funding are providing adequate health care services. Ms. Jones thought that BADA gave the best comparison to their positions as it provides grant funding to different entities throughout the State that provide treatment services. They also certify the treatment programs to assure they are meeting their requirements, federal and State standards, and to ensure quality of the services provided to recipients. Ms. Jones stated that she and Ms. Dunaway serve those functions for the State's Medicaid agency, which provides funding and payment for direct health care services and her agency is the certification arm of that process. Ms. Jones didn't see a significant variation between the HPM and HFS classes. Ms. Jones stated the class concepts describe the HFS IV as the end line of the work done in the series, but they believed their roles have changed significantly as they are really no longer the line for direct oversight. They have a much more program management focus.

Ms. Jones explained that the second issue was the denial on the basis of no significant change as the Department found their duties were still described in the HFS concepts. Ms. Jones stated there has been a drastic change in key decision-making and responsibility, i.e., budget development for all of their State and federal functions, as they don't receive monies from the State's general fund. The HFS series concept mentions only that an HFS IV have knowledge of the State budgeting process. Ms. Jones felt it didn't equate to their current responsibility of preparing a full budget and explained how their involvement in the budgeting process had grown since 1996. Ms. Jones stated this duty is identified in the HPM II concepts.

Ms. Jones stated another change was their direct testimony before the Legislature. In 1996, as HFS IV's they would sometimes be asked to provide comments to the Bureau Chief regarding proposed legislation with direct testimony only provided by the division administrator and occasionally the Bureau Chief would be asked to attend. In 2005, Ms. Dunaway provided direct testimony to the Legislature, and they now attend meetings in support of their Bureau Chief's testimony.

Ms. Jones addressed their program oversight of enforcement activities and the imposition of State and federal sanctions. The sanction process of health care facilities has changed since 1996, as they are now authorized to make sanction decisions without the Bureau Chief's approval. Ms. Jones explained they compared those functions with the work performance standards of an HPM II position for chronic diseases and found the responsibility for program oversight was like theirs. They are put in situations where they make independent decisions that impact the lives of patients.

Ms. Jones felt it was hard to communicate, through the desk audit process, what they consider to be higher levels of responsibility. Their duties are better described in the HPM class specification and may even be higher. Ms. Jones asked the Commission to either grant their appeal to Health Program Manager II, grade 39, upgrade the Health Facilities Surveyor IV from grade 38 to grade 39, or create a Health Facilities Surveyor V, grade 39. Ms. Jones stated their supervisor, Pam Graham, was present if they wanted her to testify.

Chairman Enus asked the Department to make their presentation and then other parties could address them.

Robert Burd, Personnel Analyst, Department of Personnel, would address Ms. Jones' appeal in the south, and Ron Foster, Personnel Analyst, Department of Personnel, would present for Ms. Dunaway in the north. As the appeals were similar, Mr. Burd would address the lack of significant change and Mr. Foster would explain the class concepts.

Mr. Burd listed the reasons for denying the appeals was 1) lack of significant change, 2) current duties to not meet the concepts of the HPM II class, and 3) the positions are appropriately aligned with others in their occupational sub-group. Mr. Burd explained the 2005 NPD-19 of Ms. Jones stated the major purpose of her position was to assure that quality health care is provided by State licensed or Medicare certified providers, which is consistent with the HFS concepts.

Mr. Burd compared Ms. Jones' 2005 NPD-19 to the 1995 Position Description Questionnaire (PDQ) and the HFS class specification. Ms. Jones indicated that 78.5% of her duties are new; however, the Department's analysis found them to be less than

17%. Mr. Burd reviewed the knowledge, skills and abilities of the HFS IV class and found that these positions are intended to supervise a unit, participate in the preparation of budgets, participate in mediation, and interact with the media.

Ron Foster stated he conducted the study on Jennifer Dunaway's position. Mr. Foster explained that in any classification, there would be overlap between categories to a greater or lesser degree; but explained there were key duties of HPM's that do not tie to the appellant's positions. The HFS series is a more clear, accurate description of the work they perform. Mr. Foster explained the differences between the Health Related Services and Hospital Inspection sub-groups, both of which are in the Medical, Health & Related Services occupational group. He reviewed a chart of HPM II duties, which described some of the appellant's duties; however, the supervisory/management duties are so general that they could apply to dozens of classes across virtually all the occupational groups. The duties not performed by the appellants are what differentiate Health Program Managers from Health Facility Surveyors. Mr. Foster reviewed the HFS knowledge, skills and abilities requirements saying that HPM's would typically not meet them. The minimum qualifications are broader for the HPM II, requiring four years of experience in a health related field. The HFS IV is required to have four years of experience as an inspector or surveyor in a State or federal regulatory program involving the inspection, licensing and complaint investigation of health care facilities.

Mr. Foster summarized saying that the appellant's positions have experienced growth in many areas just as others in their occupational sub-group, but it did not meet the significant change rule. He asked the Commission to deny the appeal.

Pam Graham, Chief, Bureau of Licensure & Certification, Health Division, Department of Health & Human Services, addressed Mr. Foster's statement that the HFS IV staff are appropriately aligned as hospital inspectors. They are responsible for 1,040 different types of facilities. She explained that Mr. Foster was not correct in saying that HFS IV's do not assess disease, or provide outreach to at risk populations.

Ms. Graham stated they work directly with the Center for Disease Control in conducting investigations along with the State Epidemiologist, hospitals, and Attorney General's office; they ensure individuals receive flu vaccinations, and that others are tested and diagnosed for tuberculosis; they are a member of the public health preparedness team for biological agents and exposure; they address the needs of the mentally ill being served and the appropriateness of care; they do more than review construction drawings, they directly inspect construction in any medical or health facility; budget preparation involves work programs, State and federal reporting, the biennium budget, and fiscal analysis throughout legislative sessions. They do all the functions to a higher degree than HPM's regarding enforcement, decision-making, and working independently with criminal investigators. Ms. Graham stated she supports the upgrades and feels they are warranted allocation to grade 39.

Leslie Tashiro, Personnel Officer, Health Division, Department of Health & Human Services, explained the division currently has three equal HFS IV positions with one proposed, and the Health Division supported allocation to grade 39 for all of them. Mr. Foster stated he was concerned that other HFS IV positions haven't been studied.

Chairman Enus asked her fellow members if they were interested in sending the appeals back to the Department to try and resolve. Chairman Enus suggested a review of the proposed duties of the new position, and meet with Chief Graham to review the findings and return to the Commission with their recommendation.

Commissioner Sánchez asked whether they were hearing a classification appeal or a request for grade increase. Chairman Enus stated they were considering the HPM II class, or if warranted, creation of a HFS V, grade 39.

Commissioner Sánchez asked whether they have the authority to reallocate to grade 39. Director Greene stated they did; however, she was concerned with the two remaining positions, as NPD-19's are required in order to make any change.

Ms. Jones stated they had experienced growth not only in volume, but the complexity of the health care programs require them to be functioning at different levels. They primarily serve an oversight role.

Jennifer Dunaway asked the Commission to look at the significant change in responsibility as it's valid and warrants the upgrade.

Chairman Enus agreed there was a significant amount of information presented and she suggested the parties take one more look at all the issues.

Commissioner Sánchez thought there was a disconnection, as the Department presented duties and the appellants presented responsibilities. He stated that responsibilities are tied to the duties and tasks assigned and he asked for that to be clarified before making a decision.

Mr. Foster stated the Department was tasked to review the duties listed on the NPD-19, analyze whether they had significantly changed, and if so determine whether the duties were at a higher level. Referring to Chief Graham's comment regarding the number and variety of facilities they inspect as a reason for granting the appeals, Mr. Foster stated that the first paragraph in the HFS series concept currently lists those facilities. Mr. Foster explained that the Environmental Scientists, in the same occupational sub-group as the HFS series, have undergone similar changes in their jobs based on new statutes, laws and programs, but the question is whether they were higher level.

Mr. Burd presented a chart associated with the last occupational group study showing the other classes the HFS IV was aligned with, and explained that granting the appeals would also impact those positions.

Ms. Jones thought that Mr. Foster's explanation of duty vs. responsibility wasn't clear. If the duty is listed then doesn't the responsibility factor in? Commissioner Sánchez thought that Mr. Foster addressed it in terms of the classification, but asked him to address the increased decision-making responsibilities even though the duty may have existed before.

Mr. Foster gave the example of budgeting. The appellants have shown that they prepare budgets and have more than just knowledge of the process as required in the class specification; however, these duties are equivalent to a Budget Analyst II or III, at grades 36 and 38 and wouldn't be considered higher level duties even though it may be a new duty, because it hasn't gone beyond the scope of their current grade level.

Ms. Dunaway stated they do have the responsibility to prepare the budget and asked if it exceeded a Management Analyst II. Mr. Foster replied that Administrative Services Officer I's, grade 37, in the Health Division prepare budgets.

Ms. Graham stated they don't have any analysts in their Bureau. They have an Administrative Services Officer I, clerical support, and the HFS IV's. The HFS IV's do all the budgeting in addition to their inspection duties.

There being no further comments or questions, Commissioner Sánchez's motion to deny the appeals was seconded by Commissioner Eastwick and carried 3 to 1, with Chairman Enus voting against the motion.

Chairman Enus called a 5-minute break at 11:40 a.m. and reconvened at 11:45 a.m.

B. Chuck Conner, Chief IT Manager, for Patricia Graves, Administrative Assistant IV
Technology Division, Department of Motor Vehicles

Chuck Conner, Chief IT Manager, Department of Motor Vehicles, explained the work performance standards of Ms. Graves' position were drawn directly from the Management Analyst class specification. Mr. Conner stated Ms. Graves' duties over the past year were hard to quantify because they've been ongoing. There's been significant change and her position is constantly evolving in the IT area with the fiscal impact that goes with it. Mr. Conner explained that he and Ms. Graves are the only administrative staff in the IT area and they perform each other's duties when either one of them is out of the office.

Ron Foster, Personnel Analyst, Department of Personnel, stated he conducted the 2005 study on Ms. Graves' position. He introduced Dana Carvin, Supervisory Personnel Analyst, who supervised two of the NPD-19 studies. Mr. Foster explained that in 2000, the position was reallocated up four grades from grade 23 to grade 27; in 2001, this decision was confirmed by the Clerical & Related Services occupational group study; and in 2004, the agency requested reallocation to Management Analyst II, grade 35, based on research and data collection, maintaining a variety of databases, policies and procedures, budgetary support, and legislative tracking. The Department determined the new duties did not represent a preponderance of duties at a professional level; however, the 2004 study found them consistent with the Administrative Assistant IV, grade 29, class and the position received a two-grade increase.

Mr. Foster referred to a chart showing the 2004 duties indicated on the NPD-19, with new duties identified by asterisks. When the agency appealed the 2004 decision, they changed their request to Management Analyst I, grade 33. Mr. Conner asked the Department to compare Ms. Graves' duties to a Management Analyst I in the Welfare Division's IT section, but found it to be more technical than her position to which Mr. Conner agreed.

Mr. Foster explained that in 2005, Ms. Graves initiated the current study requesting reclassification to Management Analyst II, grade 35. The new duties were identified as project control at 30%, and 10% of her time is spent on contract maintenance. Mr. Foster found that project control was previously identified on the 2004 NPD-19 under duty numbers one and two. Mr. Foster did find that Ms. Graves now performs all the data entry and schedules some of the smaller projects independently. Contract maintenance was also previously described in duty number two and he explained Ms. Graves' responsibility in that area.

Mr. Foster explained that upon hearing the Department's decision to not change Ms. Graves' position, Mr. Conner informed them the NPD-19 had been submitted in error and was only a draft. The Department permitted Mr. Conner to resubmit a correct NPD-19 and additional comparisons were made in consulting with other agency IT managers.

The corrected NPD-19 added divisional resource planning and continuity representing 15% of Ms. Graves' time. Mr. Foster explained that even if this new duty, project control, and contract maintenance were all considered professional level, it would not be sufficient to move the position upward as the preponderance of Ms. Graves' duties remain in the area of administrative and clerical support.

Mr. Foster reviewed a list of duties performed by an Administrative Assistant IV (AA IV) working in the IT unit at the Division of Health Care Financing & Policy (HCFP), which compares almost identically to Ms. Graves' position.

The audiovisual connection to Las Vegas had been lost for a few seconds near the end of Mr. Foster's presentation, and Chairman Enus asked him to repeat the comparisons to the AA IV at HCFP.

Mr. Conner added that he didn't see CBTAP analysis of critical business functions for disaster recovery; defining technical requests for the Department of Information Technology on the budget system; or coordination of the State's Disaster Recovery Plan on the list of duties for the AA IV at HCFP.

Commissioner Sánchez asked the incumbent, Patricia Graves, how long she's been working at her position and how many pay increases she has received. Ms. Graves responded almost five years with the one increase in 2004.

Chairman Enus asked if Ms. Graves felt the second NPD-19 submitted to the Department clearly outlined her duties. Ms. Graves replied she did believe the second one submitted for the 2005 study was accurate. Mr. Conner added that divisional resource planning and continuity has changed significantly because of the time involved in CBTAP and TIRs.

Chairman Enus felt the Department had done what was expected of them based on what was submitted, and they considered the new information presented on a second NPD-19. Mr. Conner agreed and stated he's never had any problem with the people at the Department of Personnel.

There being no further comments or questions, Commissioner Read's motion to deny the appeal was seconded by Commissioner Eastwick and unanimously carried.

- C. Carole Matrone and Kathy Raney, Administrative Assistant IV
Bureau of Early Intervention Services, Health Division
Department of Health & Human Services

Kathy Raney addressed the Commission on both appeals. Ms. Raney asked whether their Bureau Chief, Janelle Mulvenon, was present in Carson City. As she was not, Ms. Raney read a fax dated December 1, 2006, from Ms. Mulvenon in support of their appeals. Funding had been approved by the 2005 Legislature for reallocation to Family Services Specialist II, grade 31. Ms. Mulvenon addressed the significant change of duties their positions have experienced. They assist certified and licensed professionals in providing direct early intervention services; assist families with the eligibility process; conduct family needs assessments; assess community resources; and provide case management services.

Ms. Raney stated their duties better fit the Family Services Specialist II concepts and they've been misclassified since the positions were established in the Administrative Assistant series. Ms. Raney stated their positions require them to be a parent of a child with disabilities so they can better help others like them. There have been unfilled positions due to the inability of the Administrative Assistant series to recruit qualified applicants without a selective requirement. Ms. Raney stated their jobs are complex, intense, and diverse and require a great deal of responsibility. They have specialized knowledge of federal laws and numerous resources, and at times they are like social workers, grief counselors, resource specialists, crisis intervention specialists, and peer counselors. Ms. Raney stated they participate in all eligibility team meetings to discuss individual family service plans.

Ms. Raney stated there has been significant change in their duties since the merger of the two programs. Prior to the merge, they were not part of eligibility teams. Now, they sign individual family service plans along with everyone else on the eligibility team, they help develop service plans, screen all incoming calls, and recommend the composition of eligibility teams.

Adrian Foster, Supervisory Personnel Analyst, Department of Personnel, addressed Ms. Raney's comments on recruitment difficulties. Mr. Foster explained that the only difficulty is finding candidates with children of special needs. The appellants feel that this should be a requirement, but the Department doesn't consistently look at it as a true occupational qualification. Mr. Foster added that more people pass the Administrative Assistant examination in comparison to the Family Services Specialist, even though they're similar in composition. It's when the selective is applied for experience with special needs children, that approximately 70% are screened off the hiring list.

Mr. Foster explained that the Department did find significant change in these positions and upgraded them from Administrative Assistant III, grade 27, to Administrative Assistant IV, grade 29. Mr. Foster cited the reasons to be the deadline mandated by federal law to complete individual family service plans within 45 days of initial contact, and composing the group of professionals to participate on eligibility teams; however, that duty has since been removed from the appellants and is now being performed by a Developmental Specialist IV (grade 37). Mr. Foster stated the appellants' data collection and reporting to the federal government as well as their enhanced case management duties contributed to the Department's decision to upgrade their positions by two-grades to Administrative Assistant IV, grade 29.

Mr. Foster explained there are 18 Administrative Assistant IV's (AA IV) in the Health Division, 12 of whom perform some form of intake or case management duties. These positions all fit well within the AA IV class concepts. Mr. Foster stated the Department felt the duties performed by Family Services Specialists are more complex due to the number of programs available and because programs and funds must be intertwined.

Mr. Foster explained the Department found the appellant's duties comparable to another AA IV in the Health Division's Breast & Cervical Cancer Early Detection program. It is similar to the appellant's positions in that responsibility for determining financial eligibility belongs to the clinic that's referring individuals to the program.

Mr. Foster addressed the overlap of duties between the two classes by identifying the distinguishing characteristics of the Family Services Specialist II (FSS II) class. The significant difference is that FSS II's determine financial eligibility and are solely responsible for the disbursement of funds. Mr. Foster explained the appellant's positions are closely related to other established positions in State service that work with psychological, social and medical setbacks. Other positions that are similar include the Rehabilitation Technician II, Developmental Support Technician III and IV, Mental Health Technician IV, and Administrative Assistant III and IV in other programs. All of these classes are at grades 27 or 29 and the Department found 211 positions that compare to the appellants.

Mr. Foster stated the Department felt the higher-level duties being performed by the appellants had been compensated at the AA IV class. Mr. Foster added that the Administrative Assistant series was used because it's flexible and generic and accommodates the many procedural changes they have observed over the last few months.

Ms. Raney added that they didn't initiate the NPD-19 process as it was their Bureau. She explained their program is very different from the Welfare system and she acknowledged that eligibility may be determined differently from their Bureau; however, the Department didn't accommodate their serving on eligibility teams. Chairman Enus referred Ms. Raney to the comparison chart of the FSS II and AA IV, stating it had been addressed.

Ms. Raney explained that in a desk audit conducted by Mark Anastas, Regional Manager, Department of Personnel, on their Developmental Specialists, the Department found their responsibility on eligibility teams was to evaluate the child. Ms. Raney explained that as family specialists, she and Ms. Matrone are charged with evaluating the entire family.

There being no further comments or questions, Commissioner Eastwick's motion to deny the appeals was seconded by Commissioner Read and unanimously carried.

IX. Uncontested Classification Action Report

Postings #01-07 and #02-07

Chairman Enus read the revised classifications into the record. No action was required.

X. Comments by the General Public

There were none.

XI. Select Date for Next Quarter Meeting

The next quarter meeting was tentatively scheduled for February 2, 2007, and the Commission selected June 15, 2007, for the following quarter meeting.

Revisiting Sec. 5 of Item V-A, Report of Arrest or Conviction, rejected earlier, Commissioner Sánchez asked whether the section could be rewritten to satisfy all parties and asked his fellow members if they wanted to provide Director Greene with some direction. Commissioner Read felt that more work was needed, but they were up against the Legislative Commission. Director Greene stated the Department would replay today's testimony to get a clearer sense of direction, but if the Commission had something to offer, it would be welcomed.

Director Greene reviewed subsection 1 that would require employees to report felony arrests, and asked if there was concern with that part. The other part was reporting all misdemeanor and gross misdemeanor convictions. Commissioner Eastwick stated he didn't have a problem with reporting felony arrests; however, misdemeanor was too broad. Director Greene was concerned with putting in language to tie it back to an employee's job, as it leaves a great deal of discretion up to the employee to decide whether to report or not. Chairman Enus felt the language was straightforward and was similar to what the City of Las Vegas requires.

Commissioner Sánchez understood the Legislative Commission wouldn't approve the requirement for all employees to report traffic violations; Director Greene added they didn't have any problem with the reporting of other crimes. Commissioner Eastwick asked if it could be narrowed to address serious traffic violations, i.e. DUI. Director Greene stated the Department could try but she was unsure which ones would be included. In summary, Director Greene stated that if minor traffic violations were excluded the Commission would be comfortable with subsection 1. Director Greene stated she would make another attempt to communicate with the Legislative Commission and bring it back again later.

XII. *Adjournment

Commissioner Read's motion to adjourn was seconded by Commissioner Eastwick and unanimously carried at 12:47 p.m.