

**SUMMARY OF THE WORKSHOP TO SOLICIT COMMENTS ON THE PROPOSED
REGULATIONS OF THE STATE DEPARTMENT OF PERSONNEL**

June 2, 2011

CARSON CITY, NEVADA
And via Video Conferencing in
LAS VEGAS, NEVADA

Attendees in Carson City:

Teresa Thienhaus, Director, Department of Personnel
Shelley Blotter, Division Administrator, Department of Personnel
Mark Evans, Supervisory Personnel Analyst, Department of Personnel
Peter Long, Division Administrator, Department of Personnel
Cameron Vandenberg, Attorney General's Office
Adam Drost, Central Payroll Manager, Department of Personnel
Kimberley King, Personnel Officer III, Department of Transportation
Kareen Masters, DHHS
Denise Woo-Seymour, Personnel Analyst II, Department of Personnel
Carrie Hughes, Personnel Analyst, Department of Personnel
Norma Mallett, Personnel Officer III, Department of Health & Human Services-MHDS
Renee Travis, Department of Administration
Valerie Kneefel, Executive Assistant, Department of Personnel
Jamie Pruneau, Rural Services
Sue Dunt, NSHE
Tracy Walters, Health Division
Karen Caterino, Risk Management
Amy Davey, Department of Personnel
Lauren Risinger, DCFS
Patricia Graves, DMV
Deborah White, DMV MVIT
Ron Dreher
Vishnu Subramanian, AFSCME
Ron Bratsch, AFSCME
Kevin Ranft, AFSCME
Catherine Thayer, Attorney General's Office

Attendees in Las Vegas:

Mark Anastas, Division Administrator, Department of Personnel
Renee Feazell, Department of Personnel
Sandra Owen, Department of Personnel
Ron Cuzze, NSLEOA
Jill Pressman, Department of Personnel
Andrea Lamoreaux, Department of Personnel
Molly Koch, NDOC
Brian Boughter, NDOC
Judy Atwood, CRC
Stacey Guerillo, UNLV
Ann McDermott, Attorney General's Office
Jennifer DeRose, Department of Business and Industry

Willette Gerald, DMV-HR
Jeanine Lake, AFSCME Local 4041
Larry Hamilton, UNLV
Matt Garland, NSC

Shelley Blotter: Opened the meeting at 9:00 a.m. and welcomed everyone. She asked everyone in attendance to sign the sign in sheet and stated the purpose of the workshop was to solicit comments from affected parties for proposed permanent regulations. These regulations will be going to Legislative Counsel Bureau for pre adoption and then to the Personnel Commission meeting in August.

Mark Evans: He presented Item A, Compensation for standby status, and Item B, Compensation for working holiday, together. These were recently approved as temporary regulations and are now being proposed as permanent. To provide a little background on this topic, employees are compensated for working overtime, holidays, and other events as either cash or as hours into their comp time bank. If the employee chooses the latter and takes comp time off in the future, it is paid leave. As such, the hours and related wages are reported to the Public Employees' Retirement System (PERS). If an employee retires or terminates state service with a balance in his/her comp bank, the bank is "cashed out" and the employee receives pay for these remaining hours.

These comp time payouts are not reported to PERS. The reason for this is overtime pay is not reported to PERS and generally these comp time hours were earned by the employee working overtime. However, there is the possibility that some of these comp time hours were associated with holiday premium or standby. These events must be reported to PERS and can impact an employee's retirement benefit. This is primarily a concern if an employee cashes out PERS-reportable comp time that was accrued during his/her 36 highest salaried months which are used to determine the retirement benefit.

The Central Payroll system was tested to see if it could be modified in some way to account for these events. Unfortunately, it could not. Therefore, these regulation changes are being proposed for permanent adoption and will require employees to be compensated with pay for holiday premium and standby. By doing so, there would be proper retirement reporting to PERS. Adam Drost, Central Payroll Manager, was there to answer any questions.

Shelley Blotter: These are currently temporary regulations proposed for permanent adoption.

There were no comments or questions.

Amy Davey: She grouped the regulations proposed in item C and item O together, they were previously approved temporary regulations having to do with the use of a required form provided by the Department of Personnel to appeal a suspension, demotion, dismissal or involuntary transfer.

The revised NPD-54 form has been posted on the DOP website and have been presented at Agency Personnel Liaison meetings.

There were not comments on the proposed regulations.

Item D: this temporary regulation, as well as the regulation in item E which follows, was recently added to clarify the role of the reviewing officer when an employee requests a review of their performance evaluation. The appointing authority receives recommendations from the reviewing officer but has final approval authority over the contents of a performance evaluation. The NPD-15R form which is used to respond to the employee's request for review has been updated to provide an area for the appointing authority final decision. Item E modifies regulatory language to state that a grievance about an evaluation relates to the content of the report on performance and not the decision of the reviewing officer. This change reflects the new advisory role of the reviewing officer. Are there any comments on these regulations? There were none.

Items F, G & N: are proposed for permanent adoption based on the bill AB 179 passed by the 2011 Legislature. In order to discuss all of the proposed regulation changes based on AB 179 I will be taking item N on today's agenda out of order. First, I would like to provide an overview to AB 179 and then discuss the proposed regulations. There are copies of AB 179 available as a handout on the back table, please note that there are additional requirements in the statute that we are not addressing in regulation.

AB 179, in its original version, would considerably revise the disciplinary process for State service. It added several requirements including proof of adequate training, substantiation of agency policy to show they were fair, equitable, efficient and safe and the insertion of a two-step investigative process. We heard from many of you in agency HR that the broad language of the bill was of concern and that interpreting the procedural requirements would be difficult and cumbersome, particularly in remote locations or small agencies. The Department of Personnel met with the bill sponsor, Assemblyman Anderson, to discuss the bill and provide him with information about the existing disciplinary process. Assemblyman Anderson requested that we work with representatives from employee associations to address their concerns and craft amended language.

We met several times with representatives from AFSCME, NSLEOA, and PORAN and asked for input from agency management and personnel liaisons. Ultimately, an amendment to AB 179 was submitted to the bill sponsor that had the support of State Personnel and the associations and which reflected a successful process of negotiation.

Items F & G propose to add the same language regarding an impartial fact-finding investigation, or the employee's waiver of such, to the process for suspending, demoting or terminating an employee. This is consistent with common practice in most agencies. The proposed language allows the employee to waive the investigation, in writing, if he or she agrees with the allegation. Representatives from AFSCME have stated that there have been times when employees have admitted to the allegation and find that having the discipline delayed based on a pending investigation is needlessly stressful.

The proposed, new language supports AB 179 and reflects a common practice among State agencies, the use of Prohibitions and Penalties, approved by the Personnel Commission. This new regulation also supports existing statute, NRS 284.383 which specifies that the Personnel Commission will adopt a system of progressive discipline for State employees.

The proposed regulations ensure that employees are appropriately informed of agency policies, prohibitions, possible violations and penalties and a description of the progressive disciplinary process.

Kareen Masters: In regards to Sect. 13 NAC 284.742 subsection 3, suggested that NAC 284.656 be included. Also wanted to clarify if a Department has already adopted Prohibitions and Penalties then there is no other action required.

Shelley Blotter: Answered yes no further action is required.

Alys Dobel: Had 2 concerns NAC 284.642 and NAC 284.646 wants more clarification on the impartial fact finding. This is not part of pre-disciplinary hearing. Does impartial mean a supervisor's supervisor? Who is considered impartial?

Amy Davey: Answered that the employee organizations original intent was whoever was doing the investigation was someone impartial. It wasn't meant for it to be someone out of the chain of command; it very well could be the party's supervisor. . The agency would need to be able to establish that the person was impartial regarding the issue. If the issue involved the supervisor, then the investigation could be completed by the next level of command.

Alys Dobel: Can this be addressed in an internal policy?

Amy Davey: Answered, yes, that it could address in an internal policy.

Ron Cuzze: Agreed with Ms. Dobel that there should be a little more explanation regarding the word impartial. If the person conducting the investigation can be manipulated then there should be a way for the complainant to be able to have an outside source to do the investigation.

Brian Boughter: Asked if the impartial fact finding investigation, would subject agencies to further grievances about determining who is impartial, what is impartial, and so forth.

Amy Davey: These cases would go to appeal not to EMC.

Kareen Masters: This seems to imply that people are always being interviewed. In certain situations, the facts speak for themselves and there isn't an investigation.

Amy Davey: Employee Associations Representative were not hinging on the word impartial. They just wanted it to be done in a fair manner.

Ron Dreher: Dealing with standard of just cause. Likes the verbiage and is a good standard and allows someone to be objective to review the investigation. If the person is coming to work late, then it is documented already by their timesheet and doesn't need to be investigated.

Mark Evans: I am going to present several regulation changes related to the grievance process. These changes were proposed in conjunction with amendments to Assembly Bill 354. Assembly Bill 354, as originally introduced, would have eliminated the Employee-Management Committee and replaced it with paid arbitrators. The Department of Personnel did not view paid arbitration as an appropriate method of resolving grievance and believed the grievance process could be adjusted to resolve concerns about its effectiveness. The Department of Personnel worked with the employee associations--AFSCME, Local 4041, PORAN, and NSLEOA--to understand their concerns regarding the EMC and to look for solutions that would not abolish the EMC. This included developing amendments to the bill and also revising regulations to help respond to the concerns. Copies of the original bill and the proposed amendments are included in the handouts.

Item H, NAC 284.658 helps clarify those complaints that have another resolution process through State or federal laws are not considered “grievances” and should be submitted through the appropriate complaint process. This change helps clarify the EMC’s areas of jurisdiction and should reduce the number of complaints that are submitted to multiple venues.

Item I, NAC 284.678, include changes related to AB354 as well as language that were previously approved in a temporary regulation. Based on AB354’s provision for a resolution conference, NAC 284.678 is being changed to allow an employee 10 working days instead of 20 to file a grievance after the date of the origin of the grievance or the date the employee learns of the problem. This will help free up time later in the process for the use of a resolution conference if either side requests it. Changes to NAC 284.678 also reflect the language included in a temporary regulation that addressed grievances related to reports on performance. The change adds language to reflect that the appointing authority’s has the final decision making authority on the review of an evaluation and also requires that grievances regarding a report on performance be filed with the highest administrator in the Department before being submitted to the EMC.

Kevin Ranft: Since this is the initial stage of the grievance, and the intention is to resolve any issues before they become formal grievances, he would like to see the 20 days stay in effect.

Shelley Blotter: Asked if there was any discussion with his association’s members about this being the same filing period as the grievance filing for a performance evaluation of 10 days.

Kevin Ranft: There have been many conversations and employees still feel that the 20 days is appropriate.

Ron Cuzze: Was under the impression that the 20 day period for filing was remaining the same and a 10 day period for a resolution process to speed that up.

Brian Boughter: Is very happy with the NEATS system and would like it to be required for filing grievances. It makes monitoring and tracking of grievances so much easier.

Ron Cuzze: In a lot of Departments they will not allow people to file in NEATS. Until the associations have access to NEATS it shouldn’t be required, and most employees don’t even know how to file in NEATS.

Amy Davey: The employee can log in and show representatives the grievance. They can access at any computer.

Ron Cuzze: The associations never get to see the replies. Only get to see it when the EMC gets it.

Shelley Blotter: Again, it is your relationship with the employee and they need to log in and show you. As the Department of Personnel it is difficult to help you.

Mark Evans: We understand the concerns regarding the NEATS system, but the proposed changes are not about the NEATS system.

Jeanine Lake: Doesn't favor electronic filing but support the language as it is.

Mark Evans: The next change under Item J is a new section which provides for a resolution conference to be held at the request of either party if the grievance has not been successfully resolved after step 3. The resolution conference was developed as an alternative to arbitration. The resolution conference as outlined in the proposed change would be an informal procedure conducted by a neutral facilitator and will give the parties a chance to develop a mutually acceptable solution. The proposed regulation provides for a set time period in which the resolution conference can be held between step 3 and the EMC hearing. Members of the EMC recommended that the resolution conference would be more effective at step 2.

Willette Gerald: Wanted clarification on who the neutral facilitator would be and both parties have to agreed to the resolution conference?

Mark Evans: Still looking at the various processes. There have been a few options that we have looked at such as having Department of Personnel staff, Mediators, someone from another Dept or Division. The key is to find someone outside that Department. The resolution conference if required

Shelley Blotter: Said that she wanted to hear from everyone regarding whether they were for or against the change, but also if the resolution conference is in the right spot in the grievance process.

Ron Dreher: Has been a part of the mediation process for years. He suggested that it be called a mediation process and not an arbitration process. Department of Personnel can come up with a mediation list and both parties can go through the strike method. He thought the resolution conference was appropriate where was in the process.

Shelley Blotter: The problem with calling it a mediation process is that the Department has an established mediation program where both parties agree to be there. In this case maybe only one party wants to be there and then it becomes a branding problem.

Mark Evans: If it was called mediation would both sides need to agree to the mediation, so would it be voluntary for both sides?

Ron Dreher: Voluntary would be best, and once the mediation process and rules are established and understood then it works well.

Ron Cuzze: In paragraph 2 it says "shall" and an "informal proceeding" this seems to be in conflict with each other and makes this mandatory. Some of these sections actually repeal the EMC.

Mark Evans: AB 354 originally repealed the EMC. In the amended version the sections establishing the EMC were put back in. The current language provides for resolution process.

Shelley Blotter: This legislation is proposed and not signed yet. Subsection 1 states the resolution conference “may” be requested. If not requested then it is not required.

Ron Cuzze: Recommended taking the word “shall” out.

Kevin Ranft: Thinks the word “shall” is a vital word in this regulation. It allows for the two parties to come together.

Cameron Vandenburg: The word “shall” has nothing to do with being required to have the conference. This language has to do with a neutral facilitator. Suggested that in paragraph two it state “if the resolution conference is requested it shall be conducted by a neutral facilitator.” This might clear up some confusion.

Matt Garland: Suggested indenting paragraph 2, 3 and 4, and state they are subsections.

Kimberley King: Indicated that NDOT is already trying to resolve these grievances at every step in the process. She doesn’t feel that if both parties are not willing to resolve then a facilitator isn’t going to help. All this does is extend a final decision. If there is going to be a resolution it should be done by the 3rd step.

Mark Evans: Wanted to clarify the timeframe. The resolution conference would be held between step 3 and the EMC hearing. The resolution conference could be requested any longer than 30 days after the employee received a response from step three. If the EMC hearing was scheduled then it had to be requested at least 10 days before the hearing. Both sides have to receive 21 days notice of the EMC hearing, so the resolution conference should fit within this time frame. **Kimberley King:** Concerned that cases aren’t getting through the EMC quickly enough.

Mark Evans: The last 2 EMC’s in Carson City have been cancelled due to a lack of cases.

Shelley Blotter: There are Departments/Agencies that are meeting with the employee all along the process trying to resolve the issue. But, this hasn’t been the case in all Departments. This is why the employee associations are asking for this resolution conference.

Kevin Ranft: This boils down to getting the employer and employee is to meet in the beginning and resolve the problem. Most of the time the employee doesn’t understand the process and it comes down to educating them. Some agencies refuse to meet with the employee and this language will help with getting communication between the parties.

Brian Boughter: Concerned about the 10 day timeframe. He stated that the packets that are required for EMC take a long time to assemble and they need to be submitted 12 days prior. If they can ask for a resolution conference 10 days before the EMC, then a lot of hard work has gone to waste.

Jeanine Lake: She stated that the whole point of the bill in abolishing the EMC and replacing with an arbitrator was to avoid grievances getting to that level. AFSCME believes in resolution before the grievance gets to the EMC. There are Departments who don’t communicate with the employee now and the employee would in most cases like to resolve and not go the EMC. In

regards to the packets, in many cases all of the pre work on these packets has been done and then the grievance is resolved either before the meeting even starts or during the meeting.

Catherine Thayer: She indicated that she has seen several cases that have wound up at the EMC where the employee's expectations are unreasonable and some issues cannot be resolved. Does not support this extra step and believes that it takes the EMC to tell the employee that what they are asking for cannot be done.

Vishnu Subramanian: Does not understand why anyone would be opposed to the resolution conference because it increases communication between the employee and employer. This just provides one more opportunity to resolve the issue.

Kareen Masters: Agreed with many of the comments Kimberley King made. DHHS is the largest Department in State government and it does not ignore grievances and not sure where the employee associations are coming up with the idea Departments aren't trying to resolve or communicate with the employees. Suggested that in subsection 1 and 2, insert after additional discussion may be used in resolution, either "party may request resolution conference if a meeting has not been conducted during the grievance process". The AG made a good point as well, that some employees need to hear a final resolution from the EMC. Not clear what subsection 4 is saying and is too open ended.

Ron Dreher: It is his experience that in the lower levels you are either going to have communication or not. But, it is the appointing authorities that can make this decision not the lower level staff. He thinks the appropriate place for this conference is after the appointing authority has made a decision and prior to EMC.

Ron Cuzze: Agrees with Ron and has never seen a resolution at step 2 of the process.

Cameron Vandenberg: Stated that they are looking into expanding the EMC jurisdiction to recommends to Governor on issues that may or may not come up.

Kimberley King: More often than not we resolve the grievance before step 3 and there will be a cost involved in the resolution conference step. Feels voluntary mediation would be a better avenue.

Alys Dobel: Agrees with what Kimberley King has said and most grievances are resolved before step 3. She thinks that the decision from the administrator of 30 days is too long and should be shortened to 10 days. The actual resolution itself and should be at a earlier level than step 3 and shouldn't involve the director if possible.

Jeanine Lake: There are always going to be costs involved whether you go to a mediator or a arbitrator. This isn't a process that's mandatory, and she is in support of this step.

Kevin Ranft: At any time the agencies can resolve these issues. The intent is to get the grievances resolved and reduce the amount that are going to the EMC to 5%. He would like to see the EMC as more of an arbitrator eventually. He supports this process.

Ron Cuzze: The intention of this resolution conference was for the Departments that don't talk with their employees, and this happens primarily in paramilitary organizations like the Department of Corrections.

Mark Evans: Changes to 284.695 under item K clarify which areas fall outside of the EMC's jurisdiction. Again, an issue where there is another federal or State hearing process of complaint process should be filed in that venue and not as a grievance. This will help insure that issues are not heard in multiple venues.

Kareen Masters: Has an issue with language regarding the word "Jurisdiction", would like more clarification.

Mark Evans: One of the issues that were brought up concerning the EMC meetings was that the hearing process was too much like a legal proceeding and this was intimidating to the employees. Changes under item L to 284.6955 remove languages regarding how the hearing will be conducted. This will allow the EMC to adopt a less formal process, and this can be placed in written procedures adopted by the EMC instead of in regulations. The use of procedures will give the EMC the opportunity to adapt the process as needed. The procedures would be publically available to all parties on the Department of Personnel website.

Shelley Blotter: These would be similar to the procedures developed in the last year for hearing officers.

Ron Dreher: Doesn't want the policy to change each time the committee meets.

Mark Evans: If the EMC adopted procedures they'd have to do it at a meeting and go through the process required by the Nevada Open Meeting Law. so they couldn't be changed without notice. Can't imagine the EMC would want to change the procedures every time they met.

Cameron Vandenberg: Definitely we want consistency in the procedures.

Shelley Blotter: We have already offered to draft something for the EMC for their review in case this regulation is made permanent.

Ron Dreher: Will this be one policy that applies to all employees?

Shelley Blotter: Yes

Ron Cuze: Wouldn't it be easier for the EMC to put verbiage on each proceeding and less formal instead of doing a policy change?

Brain Broughter: If you are deleting number 7, then number 8 becomes number 7.

Kareen Masters: Asked is deleting "testify" meant the person wasn't under oath. Preferred the person continued to be under oath. If EMC wants to draft new procedures, then why don't they just put it in regulation?

Shelley Blotter: Took out testify because it gave a legal format and it is a more informal meeting. And the regulation wasn't changed because the EMC wanted more flexibility.

Mark Evans: Item M NAC 284.696 addresses unlawful discrimination. The proposed change to this regulation removes the grievance process as a way to report discrimination. The regulation offers other, more appropriate ways to report discrimination, and the Employee-Management Committee has historically referred discrimination complaints to a more appropriate venue.

Amy Davey: Item O NAC 284.778 This amendment, proposed by the Department of Personnel, adds language regarding the use of a required form to request a hearing. This makes the regulation consistent with the changes made to the hearing procedures regulation in section 3.

Mark Evans: I will be addressing two proposed amendments that pertain to the State's rules on testing for the use of alcohol and drugs. These regulation changes were recently proposed as temporary amendments and are now being presented for permanent adoption.

In Item P section 16, the Department of Personnel is proposing a permanent amendment to NAC 284.882. The U.S. Department of Health and Human Services guidelines provide standards on issues to include, for example, cutoff testing levels and laboratories. The standard regarding laboratories is consistent with NRS 284.4067 that requires screening tests to be performed by a laboratory that is certified by the United States Department of Health and Human Services. However, also adopting the procedures does not allow for flexibility in the State's drug and alcohol testing program. This amendment will allow the Personnel Commission to adopt procedures and supplementary standards that reflect the State's unique testing challenges while maintaining bases for the testing program with the federal standards. This could potentially allow for testing for substances that are not on the federal controlled substance schedules but have been placed on the State of Nevada controlled substance schedule. The Department of Personnel is currently researching procedures and standards used by other public entities.

In Item Q Section 17, the Department of Personnel is proposing a permanent amendment to NAC 284.888. Testing on the basis of circumstances related to a motor vehicle accident as outlined in subsection 2 of NRS 284.4065, does not require following the procedures outlined in subsection 1 or NRS 284.4065. This amendment will bring NAC 284.888 into alignment with NRS 284.4065.

Kimberley King: Indicated that NDOT supports this change.

Karen Caterino: Where Risk can help facilitate in this is that the appointing authority can request and employee to submit to a screening in the event they are in a motor vehicle accident. That individual files for a Workers Compensation claim, the appointing authority can ask for a test. In the case where the motor vehicle accident occurs and they are not seeking medical treatment, asked how agencies would like the testing be completed? Asked if the State could be viewed as the appointing authority?

Sue Dunt: Supported this change. Would like clarification on the protocol set up at the clinics or through workers comp for this type of situation and how to get this testing done in a timely manner.

Ron Cuzze: Paragraph 2, concerned about an employee incriminating himself in any way.

Shelley Blotter: NRS. 284.4065 it already provides for us to do this process and so this is referencing what is already in statute

Kevin Ranft: Is there a standard of screening test that is already established and is it posted?

Mark Evans: All the drug standards are set by the Department of Health and Human Services and they are national standards and alcohol is set by the State. We were allowing if there were other standards for drugs we could include them.

Shelley Blotter: This was to provide for additional drugs that were not included.

Ron Dreher: What kind of testing would be given? Blood, urine, breathe?

Mark Evans: Urine for drugs. .Breath for alcohol. In the case of an accident or if employee was unconscious, it could be blood.

Shelley Blotter: Closed the workshop.