

**STATE OF NEVADA
PERSONNEL COMMISSION**

Held at the Legislative Counsel Bureau, 401 South Carson Street, Room 3138, Carson City, Nevada 89701; and via video conference in Las Vegas at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue.

**MEETING MINUTES
September 7, 2018**

COMMISSIONERS PRESENT

IN CARSON CITY: Ms. Patricia Hurley, Commissioner

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IN LAS VEGAS: Ms. Katherine Fox, Chairperson
Mr. Gary Mauger, Commissioner
Mr. Andreas Spurlock, Commissioner
Mr. David Sanchez, Commissioner

STAFF PRESENT IN CARSON CITY:

Mr. Peter Long, Administrator, Division of Human Resource Management (DHRM)
Ms. Shelley Blotter, Deputy Administrator, DHRM
Ms. Beverly Ghan, Deputy Administrator, DHRM
Ms. Carrie Hughes, Personnel Analyst, DHRM
Ms. Michelle Garton, Supervisory Personnel Analyst, DHRM
Mr. Frank Richardson, Compliance Investigator 2, DHRM

STAFF PRESENT IN LAS VEGAS:

Ms. Heather Dapice, Supervisory Personnel Analyst, DHRM

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

Chairperson Fox: Opened the meeting at approximately 9:00 a.m. She welcomed everyone and took roll.

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. She asked if there were any public comments. There were none.

III. APPROVAL OF MINUTES OF PREVIOUS MEETING DATED JUNE 8, 2018 – Action Item

Chairperson Fox: Called for revisions or additions.

MOTION: Moved to approve the minutes of the June 8, 2018, meeting.
BY: Commissioner Mauger
SECOND: Commissioner Hurley
VOTE: The vote was in favor of the motion with Commissioner Sanchez abstaining.

IV. DEPARTMENT OF ADMINISTRATION HEARINGS DIVISION FY18 HEARING OFFICER PERFORMANCE SURVEY REPORT

Paul Trepanier: Introduced himself as the Information Systems Specialist for the Hearings Division.

Michelle Morgando: Introduced herself as the Administrator of the Hearings Division. She asked if anyone had any questions about the survey.

Commissioner Sanchez: Asked if the speakers could provide an overview of how this particular performance survey was done. **Paul Trepanier:** Replied he compiled the active cases of the last fiscal year of all the cases that the agency heard, pulled out the names of the participants and provided them a link to the Survey Monkey website to complete the questionnaire. **Commissioner Sanchez:** Asked what the type of return rate was on the survey. **Paul Trepanier:** Responded the return rate was 9 percent. **Commissioner Sanchez:** Asked why the rating scale was zero to five in one section and in another section there was a scale from zero to one hundred percent. **Paul Trepanier:** Answered that the zero to one hundred percent section of the questionnaire was in a yes/no format. He totaled up the responses and that's where he came up with one hundred percent. The standard format of the survey was based on the biennial survey of the Appeals Officers who hear Workers' Compensation hearings. The small response rates made the charts look misleading. **Commissioner Sanchez:** Asked about one particular section for one Hearing Officer whose overall rating was a 4, but it also stated, "do not retain this individual." How could that be? **Paul Trepanier:** Replied perhaps the respondent did not like that particular officer; it's impossible to gauge the intent. **Commissioner Sanchez:** Asked that given such a small return rate, how valuable is this survey in terms of going forward with it? **Paul Trepanier:** Stated that it depends on the Special Appeals Officers that get a two-year contract; he does not make those decisions himself.

Michelle Morgando: Clarified that the Special Appeals Officers, with one exception, that hear the DHRM cases, also hear a variety of other agency appeals through interlocal agreement. They are gubernatorial appointees, like the Appeals Officers that are employed by the Hearings Division and are appointed by the Governor every two years and under contract with the Hearings Division for two years. **Commissioner Sanchez:** Asked what the plan was for using the report at this point. **Michelle Morgando:** Responded they were requested to provide this information to the Commission. The information will be provided to the Special Appeals Officers, so they know how the surveys were compiled and rated, but its purpose is to provide information to the Commission.

Commissioner Spurlock: Asked if there is any strategizing going on about how to possibly increase the response rate? While any information is always better than no information, they really need to be careful with low sample sizes. **Paul Trepanier:** Answered that their regular Workers' Compensation returns were also 9-10 percent, but the difference was there are about 6,500 cases for Workers' Comp and only 45 for the personnel appeals.

Chairperson Fox: Asked for clarification on how participants were defined. Would you define a participant in the survey as either an employee who appeared before the hearing officer or a management representative? **Paul Trepanier:** Affirmed that they did define participants as those two parties but excluded the AG's Office. **Michelle Morgando:** Clarified the surveys went to the attorneys that appeared in the cases, as well as representatives. **Paul Trepanier:** Stated that personal assistants were also excluded from the survey. **Michelle Morgando:** Clarified the Attorney Generals who appeared in the cases were included, but not their assistants.

Commissioner Mauger: Stated he had some concerns that besides the very low return rate, the reports of the hearings were all on the side of the agency. He was not a fan of hearing officers because there shouldn't be any connection between who's paying you or not. He was very interested to see, maybe the year prior to bringing on the Hearings Division, the decisions of the contracted arbitrators versus the decisions of the now-in-place Hearings Division and thinks there needs to be a better plan to get a response from the individuals that are actually using hearing officers and somehow hold them accountable.

Chairperson Fox: Asked Ms. Morgando if she had some thoughts, recommendations, or ideas going forward about surveys, how to do them differently, how to get more responses and can there be a way that the data can be separated between contracted hearing officers and those that are employees within the Hearings Division. **Michelle Morgando:** Stated that Chairperson Fox's points are very well taken. They have always been disappointed with the response rate for the appeals officers who are employees of the Division and they will most certainly undertake all of these concerns and develop a way to advertise better to the individuals that they want to respond. **Chairperson Fox:** Stated the Commission had received some data about the number of cases that go to the Hearings Division and the results; those that were unfounded, those that were sustained, those that were decided before the actual hearing was held. And marrying the two data pieces would be meaningful information for the Commission and for the Division of Human Resource Management, and the Hearings Division, too. **Michelle Morgando:** Replied that they most certainly could

combine that information with the revisions to the actual survey.

Chairperson Fox: Asked if there were any other comments from the Commissioners.

Paul Trepanier: Shared that the previous year, they only had one survey respondent; this year, they used Survey Monkey with some success. There were one or two respondents per appeals officer instead of one total and changes are being considered.

Chairperson Fox: Thanked Mr. Trepanier and asked if there were any other comments from the Commissioners.
Shelley Blotter: Explained DHRM did compile information from FY18, 17 and 16. Of the number of cases that went before the hearing officers in FY18, 16 of those were affirmed, nine were reversed and five were settled during the process. In FY17, 13 were affirmed, two were reversed and 12 were settled. In FY16, 19 were affirmed, four reversed and 16 settled. We can go back and see if we can get additional information for those years when we used independent contractors, but isn't sure if that information is available, so we will work on that. And if it is available, we can send it out to the Commissioners in the interim before the next meeting.

The data that Commissioner Mauger was referencing was compiled by the Division of Human Resource Management. We typically would have married those two pieces together, but because we were trying to provide information requested by the Commissioners at the previous meeting as quickly as possible, it was separated out. In the future, we will make a note to marry that information together and then hopefully present it at the September meeting again.

Commissioner Mauger: Told Ms. Blotter he has not been getting the decisions in favor of the individual; he is only getting the ones that are in favor of the agency. Could someone please look into that? **Shelley Blotter:** Stated they will go back and look at the records to make certain that the Commissioner receives all of those in FY18.

Chairperson Fox: Thanked everyone and indicated the next item was for possible action. She stated they would first hear Item V-A, have a discussion and render a decision, and then move to Item V-B.

V. DISCUSSION AND APPROVAL OF PROPOSED REGULATIONS CHANGES IN NEVADA ADMINISTRATIVE CODE, CHAPTER 284 – Action Item

A. LCB File No. R118-17

- Sec. 1. Amends Chapter 284 of NAC to add Sections 2 and 3.
- Sec. 2. NEW Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license.
- Sec. 3. NEW Report of arrest, charge or conviction of an offense.
- Sec. 4. NAC 284.646 Dismissals.
- Sec. 5. NAC 284.650 Causes for disciplinary action.
- Sec. 6. NAC 284.653 Driving under the influence; unlawful acts involving controlled substance.
- Sec. 7. NAC 284.890 Transportation of employee to and from location of screening test.

Carrie Hughes: Introduced herself as a Personnel Analyst with the Division of Human Resource Management. She said the changes outlined in Sections 1 through 6 of LCB File Number R118-17 are based on a request from an agency due to having to address a public incident with an employee who committed offenses while off duty. Section 1 amends Chapter 284 of the Nevada Administrative Code to add Sections 2 and 3 of LCB File Number R118-17. Section 2 proposes a new regulation requiring an employee to report the suspension, revocation or cancellation of a professional or occupational license, certificate, permit or driver's license within five working days if it is listed as required in one of the items outlined in the regulation.

This regulation supports the causes for disciplinary action outlined in NAC 284.646 and 284.650 by requiring this notification to an agency. Section 3 proposes a new regulation requiring an employee to report being arrested for, charged with or convicted of an offense if this results in the employee being temporarily or permanently unable to perform the duties of his or her position. The intent is to protect the State and the public if an employee can no longer meet the requirements of his or her position due to off-duty behavior.

The amendment to NAC 284.646 in Section 4 allows an agency to immediately dismiss an employee based on the new requirements in Sections 2 and 3 of this file. The amendment to NAC 284.650 in Section 5 allows an agency to

discipline an employee based on the new requirements in Sections 2 and 3 of this file. The amendment to NAC 284.653 in Section 6 will require employees to report to their appointing authorities, within five working days, arrests and convictions relating to driving under the influence, the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance, or violation of any State or federal law prohibiting the sale of a controlled substance. The report is required regardless of whether the incident leading to the arrest or conviction occurs while the employee is working or is on his or her personal time. Violation of this requirement will require the dismissal of an employee.

While an amendment to NAC 284.890 was recently brought before this Commission, this further amendment in Section 7 of this file is based on concerns received from an agency after they needed to address an employee's medical need following a reasonable suspicion test. As the use of alcohol and/or drugs can at times lead to a need for immediate medical intervention, the intent of the amendment is to provide agencies with the flexibility to respond as necessary to ensure an employee's safety when arranging for appropriate transportation following a screening test that does not immediately establish an employee is not impaired.

The determination that an employee needs emergency medical assistance does not require a medical professional's evaluation, but rather relies on a reasonable person's standard. It allows for an employee to choose to make his or her own transportation arrangements. However, all three options in the regulation continue to require an appointing authority to actively ensure that the employee has appropriate transportation. Additionally, the amendment clarifies that an agency is responsible for ensuring transportation for an employee to and from the test collection site only when the test is based upon reasonable suspicion of impairment. Comments were solicited from employee organizations and agencies on the proposed changes in this file.

Chairperson Fox: Thanked Ms. Hughes and asked if there were any questions or comments from the Commissioners about Item V-A, LCB File R118-17.

Commissioner Spurlock: Said he had a question about Section 2, page 56, where it says, "Certificate or permit or driver's license is a requirement of the position at the time of appointment." Then later on at the end of the sentence the section said, "or required thereafter pursuant to federal or State law." He understands that the Feds or the State could add a new certification requirement at anytime and that that would still apply, that if it's mandated and added to the specification because of a federal or State law, then the same rule still applies that the employee would have to notify the employer. The part in the middle though, where it says, "at the time of appointment" is where he had some questions.

For example, I have a Combination Plans Examiner job. It's a very heavily certified job that requires eight or nine certifications and is extremely hard to recruit for. Right now, it's a hot job in the marketplace. They tried to redesign the job, so it comes in with a minimum amount of those certifications. But then, they have a three- to four-year period to get all the certifications or face termination. And after they get the certifications, employees have to maintain them. If there is anything similar like that at the State where certifications have to be gained after the time of appointment, would that be different? The language only says, "at the time of appointment." What about those other situations where you're letting people, or having to have people get two certifications at time of appointment, two certifications within a year after that, and another two certifications within a year after that?

Peter Long: Stated Commissioner Spurlock was correct and their intent is to address this issue. Some positions require certain licensures or certification at the time of appointment and may need additional certifications as their tenure increases. I think that's addressed where it says, "or class specifications for the position." Those specifications would note that additional licenses or certifications would be required within a certain amount of time. So, they are trying to address it when they say, "at the time of appointment, or as determined in the class specifications" They would allow someone to get additional certifications as their tenure progressed.

Commissioner Spurlock: Thanked Mr. Long for the clarification.

Chairperson Fox: Asked a process kind of question. Say that somebody has been arrested, off-duty. The agency learns about the charges and might suspend someone until they learn the facts and circumstances in more detail. The agency doesn't necessarily have to dismiss. Are there a variety of disciplinary actions available to the agency before dismissal?

Shelley Blotter: Responded in the affirmative. There may be no discipline at all if there's no conviction. It's just a

matter of informing us so that we can make decisions if we need to possibly place that person in a position where that license or certificate isn't required while this is making its way through the process, or potentially, there may be a situation where they need to be placed on leave. It may be disciplinary in nature or it could be something other than that. It's just so a good management decision can be made with that information.

Commissioner Mauger: Asked how many of the representatives from the different groups were present at these meetings on these changes. Was there anyone at the workshop? **Shelley Blotter:** Answered no employee association representatives were at the workshops. There was a written comment provided by one member of an employee's association regarding a different proposed regulation, but it didn't impact any of these regulations. We did reach out to AFSCME representatives prior to this meeting and neither of them had concerns with the proposals that are being made, and they're not present today.

Chairperson Fox: Thanked Ms. Blotter and asked if there were any other questions or comments from the Commissioners about V-A, LCB File R118-17. Hearing none, she entertained a motion.

MOTION: Moved to approve Item V-A, LCB File Number R118-1: Section 1, Amends Chapter 284 of NAC to add Sections 2 and 3; Section 2, NEW Report of suspension, revocation or cancellation of a professional or occupational license, certificate or permit or driver's license; Section 3, NEW Report of arrest, charge or conviction of an offense; Section 4, NAC 284.646, Dismissals; Section 5, NAC 284.650, Causes for disciplinary action; Section 6, NAC 284.653, Driving under the influence; unlawful acts involving controlled substance; and Section 7, NAC 284.890, Transportation of employee to and from location of screening test.
BY: Commissioner Mauger
SECOND: Commissioner Sanchez
VOTE: The vote was unanimous in favor of the motion.

B. LCB File No. R063-18

- Sec. 1. NEW Refusal to submit to a screening test: Reasons an applicant or employee shall be deemed to have refused a test; potential consequences of a refusal to submit to a screening test by an applicant.
- Sec. 2. NAC 284.578 Leave of absence without pay.

Carrie Hughes: NAC 284.882 adopts the U.S. Department of Health and Human Services standards for federal workplace drug testing programs by reference which outlines what constitutes a refusal to submit to a drug test and the consequences for refusing to submit to a drug test. However, due to concerns raised by a 2017 disciplinary appeal decision and a need to address what constitutes a refusal to submit to an alcohol test, the Division of Human Resource Management is proposing the new regulation in Section 1 of LCB File Number R063-18, which is based on those adopted federal workplace standards.

Subsection 1 outlines what situations would constitute a refusal to test. Subsection 2 addresses the consequences for an employment candidate who refuses to submit to a drug test. The consequences for an employee who refuses to submit to an alcohol or drug test is not addressed in this regulation as it is already outlined in NRS 284.4063, and Subsection 3 defines the terminology used in the regulation. The amendment to NAC 284.578 in Section 2 is a housekeeping change for consistency with similar provisions in other regulations; it does not substantially change the provision. Comments were solicited from employee organizations and agencies regarding these proposed changes in this file.

Chairperson Fox: Thanked Ms. Hughes and asked if there were any questions or comments from the Commissioners about Item V-B, LCB File No. R063-18. Hearing none, she entertained a motion.

MOTION: Moved to approve LCB File Number R063-18, Sections 1 and 2: Section 1 NEW Refusal to submit to a screening test: Reasons an applicant or employee shall be deemed to have refused a test; potential consequences of a refusal to submit to a screening test by an applicant; and Section 2 NAC 284.578 Leave of absence without pay.
BY: Commissioner Mauger
SECOND: Commissioner Sanchez

VOTE: The vote was unanimous in favor of the motion.

VI. DISCUSSION AND APPROVAL OF PROPOSED CLASS SPECIFICATION MAINTENANCE REVIEW OF CLASSES RECOMMENDED FOR REVISION – Action Item

- A. Mechanical & Construction Trades
 - 1. Subgroup: Semi-Skilled General Labor
 - a. 9.490 Sign Fabricator

Heather Dapice: Introduced herself as Supervisory Personnel Analyst for the State of Nevada’s Division of Human Resource Management, Compensation, Classification and Recruitment Section.

As part of the biennial class specification review process, a review was conducted on the Sign Fabricator class. In consultation with subject-matter experts from the Department of Transportation, it is recommended that minor revisions be made to this series concept to clarify existing duties and responsibilities. Also, minor revisions were made to the education and experience of the minimum qualifications to add an equivalent Associate’s degree as well as to maintain consistency with formatting.

The equivalent Associate’s degree can be obtained through a variety of sources: trade schools, vocational schools, as well as the community college. For example, CSN offers an Apprenticeship Associate’s Program as an operations engineer with a machinist emphasis. Through the course of this study, management, agency staff and analysts within the Division of Human Resource Management participated by offering recommendations and reviewing changes as the process progressed and they support these recommendations.

Chairperson Fox: Thanked Ms. Dapice and asked if there were any questions or comments from the Commissioners about Item VI-A-1-a. Hearing none, she entertained a motion.

- MOTION: Move to approve Item VI-A-1-a, Mechanical & Construction Trades, Subgroup: Semi-Skilled General Labor, 9.490 Sign Fabricator
- BY: Commissioner Mauger
- SECOND: Commissioner Sanchez
- VOTE: The vote was unanimous in favor of the motion.

Chairperson Fox: Indicated the next item on the agenda for possible action was Item VII, the Discussion and Approval or Denial of the Individual Classification Appeal of Pauline Beigel.

VII. DISCUSSION AND APPROVAL OR DENIAL OF INDIVIDUAL CLASSIFICATION APPEAL – Action Item

Pauline Beigel: Introduced herself as an Administrative Services Officer II with the Department of Transportation appealing the denial of her reclassification from an Administrative Services Officer II, 7.217 Grade 39, to an Administrative Services Officer III, 7.216 Grade 41. She believed she meets the requirements of an Administrative Services Officer III versus a II when compared to the study that started back in 2000. Exhibit 1 shows back in 2001 there was a \$23 million budget which has since doubled. The number of employees increased from approximately 349 to 485.

Ms. Beigel stated the amount she is allowed to purchase, compared to the prior position, has doubled, as has the payment voucher authority. She is assigned to the new Traffic Management Center at Interstate 215 and Decatur and is exclusively responsible for the facility’s budget. Previously, this facility didn’t exist, nor did the building next to it, which is the South Maintenance Station. She is also responsible for the Searchlight Visitor Center and makes sure the contracts get done. She deals with personnel and the budget to make sure it is maintained. NDOT is going to be taking over Interstate 215 from Clark County, and there are a lot of land swaps that in progress. NDOT recently got rid of the pedestrian bridges at Tropicana and Las Vegas Boulevard, so there are a lot of moving parts, especially since the study was done back in 2001.

Ms. Beigel indicated she now has to deal with the CDL third-party testing for employees; one employee is certified and another that is becoming certified to be able to give CDL third-party tests. Another new program is Las Vegas

Roads which dispatches freeway service patrol for motorists. And finally, NDOT has the new federally mandated Stormwater Program. Exhibits 2 and 3 show the different budget organizations and the different dollar amounts compared from 2001 to Fiscal Year 2018 where it went basically from 15 to 18 budget organizations since the last study.

Exhibit 4 related to all the moving parts in NDOT. There are 18 budget organizations and each budget organization gets to spend money; they don't have a certain amount allotted to them. It's allotted in big buckets and they're all spending from the same bucket. Ms. Beigel has 85 different people spending from this one budget, or two buckets, depending upon whether it's Tonopah or Last Vegas. She needs to keep her people in check so they don't overspend. This year there was \$50,000 left on the table after the initial \$45 million, so it's definitely a challenge to keep up with the number. It used to be about 40 people that could spend, but when you keep adding staff and crews, you keep adding authority for people to spend. I am responsible for about 600 different utility accounts; there are electricity accounts, water accounts, and propane accounts. Any time a new facility is added, I get a new account and am now responsible for the budget for the installation of the Project Neon road closure signage and have to come up with a dollar amount to figure out how much electricity will be needed. The maintenance could be a couple hundred thousand dollars a year.

Exhibit 5 lists the 65 different spending organizations over which I keep track; Exhibit 6 shows the District 1 properties. Exhibit 7 goes over the organizational chart with the yellow being two proposed positions. The equipment operations instructor, certified to do third-party CDLs, also contacts me to decide whether or not drug tests need to be given. I have a lot more increase in consequence of error for drug tests where the previous position didn't deal with those things, and I have the responsibility to make sure the CDLs are following the rules at all times. The increase in authority, the increase in consequence of error and all the other things documented in the paperwork should justify increasing my grade from a 39 to a 41.

Chairperson Fox: Thanked Ms. Beigel and invited Ms. Dapice from the Division of Human Resource Management to speak to the Commission.

Heather Dapice: Stated she conducted the review of Appellant Pauline Beigel's position, and as a result of this review, it is determined that there had been no significant change in the duties and responsibilities of the position that would warrant reclassification from an Administrative Services Officer II to Administrative Services Officer III, that the Appellant's duties are consist with the ASO 2 level, are comparable to other ASO 2 positions within State service, that any change in duties are a result of increase in workload, and that this increase in workload is consistent with and comparable to duties already being performed. In short, significant change defined in NAC 284.126 means that duties assigned to a position have changed to such a degree that the current class concept no longer fairly describes the preponderance of duties being performed. In applying the definition of change that is the result of natural growth or an increase in workload common to most positions in State service is not considered to fall within the meaning of significant change, nor is the addition of duties and responsibilities that are similar in nature or complexity to current or previous performance responsibilities. The use of new technologies in methods to carry out the same or similar duties also would not constitute significant change.

In her appeal, the Appellant indicated an increase in significant decision-making for personnel decisions related to hiring, discipline, drug testing, accident investigations, et cetera. When this position was reclassified to an ASO 2, part of the determining factor was the additional responsibility for personnel functions at the district level to include payroll, filling vacant positions, terminations, grievances, disciplinary actions and the training plan. As such, these duties would not be considered new and would not constitute significant change.

The Appellant further detailed that this position is regularly called upon to make decisions regarding accidents and types of drug tests that should be performed, however, the State of Nevada's Alcohol and Drug Program and the Federal Motor Carrier Safety Administration, along with the U.S. Department of Transportation, have set policies, procedures, standards and mandates that set the requirements for testing individuals for alcohol and controlled substances. Also, per NAC 284.498, all supervisory and managerial employees must undergo training related to alcohol and drug testing, and it is their responsibility to take immediate action whenever they observe or are made aware of a situation when an employee is suspected of being under the influence of alcohol or a controlled substance; objective facts support a drug screening test. With regard to accident investigations, the incumbent is responsible for the implementation of and compliance with set policies and procedures related to accident responses and work-related injuries.

While the Appellant implements and coordinates these personnel functions for her district, it is the Department of Transportation's Human Resources section, under the direction of a Personnel Officer III, that is responsible for the development of and adherence to the Department's own personnel policies and procedures, prohibitions and penalties, as well as adherence to those required by DHRM. The Appellant also indicated she has a greater role in fiscal management as the budget has increased from \$23 million to \$43 million. She further states that population growth and increases in the number of visitors to Clark County has increased the usage of roads, visitor centers and rest areas requiring her to anticipate overages and shortfalls in budgeted funds, ensure contracts meet the public needs, and ensure that the increase in the number of property damage claims are processed timely.

As previously stated, increase in workload and the assignment of duties and responsibilities that are similar in nature and complexity to existing duties does not constitute significant change. The responsibilities for this position are still to function as the district's business manager, administrator service facilitator, and to obtain and maintain adequacies in budgeting, fiscal management and general resource management activities. Since this duty has been performed since the position was classified at the ASO 2 level, it's not considered new and therefore would not constitute significant change.

The Appellant also detailed in her appeal that she had increased responsibility and autonomy for the Traffic Management Center budget account. Per the Governor's Fiscal Year 18/19 recommended budget, the budget for the TMC was approximately \$714,000. As the position already has autonomy and oversight of an assigned district budget at approximately \$43 million, the addition of duties of a similar nature and complexity would not meet the definition of significant change.

Ms. Beigel also detailed that her position was instrumental in the 50-year contract for Hoover Power. When the position was reclassified to the ASO 2 level, the position became responsible for the Request for Proposals, contracting agreements and various program plans which were directly involved in contract compliance. As such, this duty would not be considered new and would not constitute justified reclassification. It should also be noted that the Department of Administration's State Public Works Engineering Efficiency Specialist and the Department of Correction's Energy Efficiency Manager, both also grade 39s, were instrumental in their agency's 50-year contract for Hoover Power as well.

While the Appellant gives further examples of why she feels her position should be classified from an ASO 2 to an ASO 3, it is still the determination of DHRM that these additional duties are not significantly different than when the position was classified to the ASO 2, are the result of an increase in workload and natural growth and would still not justify reclassification from the ASO 2 to the ASO 3. In allocating positions between levels within the ASO 2 series, the Series concept states, in part, that positions are compared to benchmark descriptions and to one another. This can be found on page two of the Class Specification located in Exhibit 9 of the appeal packet.

Ms. Beigel has requested classification to the ASO 3, however, the Appellant's duties and responsibilities neither compare to the benchmark, nor do they compare to other ASO 3 positions in State service. These ASO 3 positions have departmental or divisional responsibility versus the Appellant's district responsibility; have more complex accounting, budgeting and fiscal management responsibilities; increased responsibilities that range from \$175 million to over \$800 million; have increased budget complexity to include grants, revenues, trust funds, bonds, loans, tax collection, fees, fines, interest, et cetera; have federal reporting requirements, develop financial statements, create and implement fiscal policy for their agencies; and have supervisory responsibility over financial, business management, administrative and budget analyst positions. Additional details regarding these positions can be found in Exhibit 8.

The Appellant's position, however, while not as complex as some, does compare more favorably to other ASO 2 positions within State service. These ASO 2 positions have budgets of upwards of \$75 million, have responsibility for smaller contracts and leases, some federal grants, smaller revenues and personnel functions. More detail of the comparable ASO 2 positions can be found in Exhibit 7. This position is also directly comparable to the ASO 2 position located in District 2 of the Department of Transportation.

Ms. Dapice concluded that, while there has been an increase in workload and new duties have been assigned to the position, there has been no significant change in the duties and responsibilities as required by NAC 284.126. This position also does not favorably compare to ASO 3 positions within State service. The position continues to perform duties and responsibilities associated with an ASO 2 as compared with other ASO 2 positions. The granting of the appeal would have a direct effect on the ASO 2 located in District 2 and would also create a cascading effect as it

previously mentioned ASO and ASO 3 positions that are more complex would seek upper reclassification. Therefore, it is respectfully requested that the Commission deny Ms. Beigel's appeal.

Chairperson Fox: Thanked Ms. Dapice and asked if there were any questions or comments from the Commission.

Commissioner Sanchez: Asked Ms. Beigel about a statement she made on page six of the packet. Regarding the letter of April 19th to Mr. Long she stated, "In conclusion, while I agree that looking at any one of the factors I mentioned in the original NPD-19 request, it's not a substantial change in and of itself, overall the combined change and responsibilities of the Division warrants an increase." In one sentence she was saying there is no substantial change and in another she was saying that if you put everything together it makes a substantial change. What was the logic of those statements? **Pauline Beigel:** Answered it's like synergy. When you put things together and they work differently together, you can say this tiny one little thing isn't substantial. But when you add seven or eight or 10 or 20 different tiny one little things, they become substantial; that was the logic behind the sentence.

Commissioner Sanchez: Thanked Ms. Beigel and asked Ms. Dapice how long had she been doing classification compensation studies. **Heather Dapice:** Answered a little over 11 years with the State of Nevada. **Commissioner Sanchez:** Asked Ms. Dapice if she had ever done any studies, as the Appellant has described, that would lead her to the conclusion of substantial change? **Heather Dapice:** Answered no.

Commissioner Mauger: Asked Ms. Beigel when she was hired. **Pauline Beigel:** Replied she was employed January 2, 2008, in this position. **Commissioner Mauger:** Asked what her duties were in 2001 when she came onboard. **Pauline Beigel:** Responded that the duties on the work performance standards when she was hired did not reflect accurately in this study. I had to work based on what they said the previous incumbent didn't do, not what I was doing when I was hired into the position. **Commissioner Mauger:** Did the additional work that you said you were doing create any additional hours to her work day? **Pauline Beigel:** Answered in the affirmative. I've started to delegate some of the easier service contracts to my Administrative Assistant IV who reviews the work and makes changes as opposed to starting from scratch. I'm trying to delegate and they're trying to add an additional Program Officer to help keep track of things. Right now I don't have the manpower to do all the additional things I'm trying to do. So yes, it did increase my number of hours per day. **Commissioner Mauger:** Asked if those additional hours per day went into additional pay for overtime. **Pauline Beigel:** Answered in the negative; some of it has extended into overtime, because I have to make types of decisions the previous incumbent did not make. I now have the authority to make decisions up to written reprimands, whereas the previous incumbent just made recommendations. It takes a little bit more time with the added responsibilities. There's not much overtime because I try to get everything done during the regular work hours. **Commissioner Mauger:** Noticed that there's been an uptick in these types of appeals regarding additional work versus the State saying no, it's not additional work. This is not just a one-time thing; it's beginning to pick up now. It probably stems from monetary reasons as to why, but I am concerned that these upticks are becoming more prevalent each time we have a quarterly meeting. Has your additional work cost the State anything in overtime pay? **Pauline Beigel:** Responded it has cost a couple of hours per month in overtime.

Commissioner Sanchez: Responded to Commissioner Mauger that while there may have been some upticks in terms of individuals coming before the Commission stating that they are working longer, simply because an individual is working longer does not mean that they should be reclassified. **Commissioner Mauger:** Agreed that was clear but needed to know if there was a trend beginning.

Heather Dapice: Stated the type of workload that's added to an agency would be an agency's determination to request additional positions to perform duties and responsibilities. The actual classification of the position is mandated by the duties. When additional duties are added to a position, the department looks at if that additional duty adds increased complexity to other positions classified at that higher level. The determination, in this case, was that the duties that were added were similar in nature and complexity and it did not equate to ASO 3 positions at other agencies.

Pauline Beigel: Stated that the comparison for her position to the Reno District's Administrative Services Officer II is very similar. An NPD-19 also submitted on his behalf for his position was also denied. The positions have grown similarly where we're doing more complex duties and given more responsibilities because, as the districts grow, the district engineers need to let us use some more of the complex stuff that we've been performing.

Commissioner Spurlock: Stated one has to be careful when talking about growth and budget size and other factors. Sometimes when it leads to significant increases in staff and whole new sublevels of subordinates, that could obviously

change a job. When you see things like a budget go from \$23 to \$42 billion over 17 years, it may seem that's about an 80 percent change; maybe subjectively that appears to be a lot to somebody. You really don't know when you factor in inflation and how much all relative other budgets have changed whether that's truly significant or not. You have to be careful when looking at measuring things one way based on a separate, sometimes potentially unrelated, factor like budgetary growth, inflationary growth. At that point, what we have to start looking at, if we are going to be fiscally responsible, is for all the managers out there in the State, if your budget hasn't kept up with the inflation growth rate from 2001 to 2018, can I lower your salary grade? Because I'd like to start looking for some savings that way. I don't know if it truly does exceed the inflation rate in Nevada since 2001. But even if it does, how relevant is it? And again if it's not, and there's others that haven't exceeded that inflation rate in their department's budget, how do you look at it? Are they fiscally responsible or should I be lowering their salary grade? We have to be careful on using things like budgetary growth over a period of time.

Chairperson Fox: Thanked the Commissioner and asked if there were any public comments. There were none.

MOTION: Moved to deny the Individual Classification Appeal of Administrative Services Officer of Pauline Beigel with the Department of Transportation.
BY: Commissioner Sanchez
SECOND: Commissioner Spurlock
VOTE: The motion passed with four ayes and one nay; Commissioner Mauger voted in the negative.

Chairperson Fox: Thanked Ms. Beigel for her presentation and her dedication to State service. She said the next item on the agenda was the Report of Uncontested Classification Plan Changes not requiring Personnel Commission Approval Per NRS 284.160.

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

Posting: #20-18
7.758 Energy Programs Manager
Posting: #21-18
12.455 Rehabilitation Manager II
12.409 Rehabilitation Manager I
Posting: #22-18
1.405 Metrologist III
1.403 Metrologist II
1.402 Metrologist I
Posting: #23-18
12.501 Warden

IX. UPDATE REGARDING THE ELIMINATION OF WRITTEN EXAMS

Commissioner Sanchez: Indicated he had a written statement he would like to read regarding this item. **Chairperson Fox:** Please go ahead, Commissioner Sanchez. **Commissioner Sanchez:** Regarding the elimination of written testing by the State of Nevada, I would like to go over a few items. In terms of written testing, during the Han Dynasty of Ancient China, public examinations, written examinations were given in districts throughout the country. There was an annual severe examination in Beijing where applicants for jobs in Chinese government gathered together. They were placed reportedly in ten thousand crib cells to write written responses to questions they were given.

The English adopted the Chinese method for their civil service system. In 1963, private industry throughout the country began to use written tests. In 1960, public-sector civil service written tests became very popular. And in 1974, there was a standard that was developed by the International Personnel Management Association in conjunction with the United States Civil Service Commission.

There was a manual that was produced called *The Public-Sector Employment Selection* and was developed by Dr. Grace White from the International Personnel Management Association in conjunction with other industrial psychologists from the U.S. Civil Service Commission. They developed a model selection plan for the public-sector.

There were five steps. Step number one is a job analysis to determine hiring qualifications; step two, recruiting applicants for jobs; step three, the selection, screening, examining, testing of job applicants; number four, hiring decisions; number five, follow-up.

The written test in the public-sector is one of the most complex items; I started my career with the Los Angeles County Department of Personnel doing this. One of the reasons that this manual was developed in the 1970s was that public agencies in 1972, under the EEO Act, then came under the jurisdiction of the Equal Employment Opportunity Commission in regard to the 1964 Civil Rights Act. So now, public agencies had to be reviewed in terms of employment discrimination. And so, personnel selection and testing became very important in terms of validation. There were guidelines put together about how to validate tests, et cetera. The written test in the public-sector measures cognitive and achievement abilities for some positions that are not readily measured or captured by T&Es, interviews and other features. It is interesting to note in the item that we got regarding the turn-around studies that it becomes very obvious. Turn-around studies for this data become rather rapid because they don't do written testing anymore; there's no administration. So that will speed up a selection process.

Employees rejected, that has nothing to do with the interview process or the written process, but more with a decision made after people are interviewed or there's a weighted application blank or performance test, et cetera. So, the elimination of written testing in the State of Nevada may have a subtle effect that we cannot really measure at this point without some complex designs and studies. There is a principle in personnel measurement, psychological testing, that a candidate's score - call it X - composite score or individual score, is equal to the candidate's T, true score plus error.

There's no such thing as a perfect employment test, interview, written test, et cetera. What I fear at this point is that because the State of Nevada has eliminated the written test from the model selection that was developed in the 1970s, that there is going to be more pronounced error in the personnel selection process.

Chairperson Fox: Thanked Commissioner Sanchez and stated that she, too, came from a robust public-sector selection background that had a continuum and variety of selection instruments to hire quality employees. In many cases, the written exam was the best instrument; sometimes T&E was. Assessment centers were used for promotion to management positions and the predictive value of written exams was something that hiring managers were assured of the kind of skill sets employees being hired to the organization had and what they could learn on the job. I echo Commissioner Sanchez' concerns that without those instruments in place and using T&Es, we're guessing a more subjective way about the skill sets employees come into are hired within an organization bring to the table.

Commissioner Spurlock: Echoed what Commissioners Fox and Sanchez said. The problem with written exams is often not with the person taking them or the department's perception of slow turn-around time from HR, but rather it's just that out of a fear of liability, HR departments don't strive to make the test better. If you have a bad test question, the first reaction is to throw out the question. Well, you don't throw out the question, you improve the question.

An obvious example would be multiple choice with four answers. If you have three answers with one word and a fourth answer with eight words, that's lazy test writing, and it will probably unnaturally steer the person answering the question to pick the answer with eight words because it stands out. That sounds like it's rocket science and it's not; it's natural psychology and human behavior and so much of that is in written exams. What happens in modern times is HR departments are buying test questions from outside people. From a liability standpoint, we're afraid to apply our own knowledge and fix the question. If it's not our question, we can't be sued for it; we'll just keep buying bad questions from consultants.

The famous Supreme Court case that basically started the field of HR back in 1971 was Griggs vs. Duke Power. This was in North Carolina where you had a large power plant, a multitude of functions and jobs, and you had a small little shack building next to it. That small little shack building contained the janitors and groundskeepers that maintained the building and grounds outside the larger building. But what the people always wanted to aspire to was to get into the janitor job in the large building because it had upward mobility. All of the people in the smaller building were African-American males, and they were not educated. The company tried to say that the janitor job in the large building was different, and it wasn't different. What it required was a high school education.

What they used back then was an off-the-shelf I.Q. test. They were using the only tools they knew how to use with a little bit of, maybe, laziness. So they required a high school degree. They thought, well we should require something; let's require a high school diploma. And the only way we can test on any kind of general confidence is to test on general intelligence, so let's take an off-the-shelf I.Q. test. The case went to the Supreme Court; the people sued. It was not considered a bona fide occupational qualification, and that changed the field of HR forever, because after that, we had to come up with testing that was tied into qualifications.

Are we able to do it without just having multiple choice questions? Yes, because a lot of our other areas like oral interviews have become more sophisticated. People in HR departments make sure that at least there's consistency in that oral interview. They make sure that each candidate is usually asked the same seven questions and they're not allowed to deviate. The Commission is under incredible pressure from departments to increase turn-around time, but we just have to really be careful of what we're potentially giving up by doing that.

Commissioner Sanchez: Clarified that the test in the Griggs vs. Duke Power Company case was the off-the-shelf Wonderlic test that is still being used today in the NFL. **Chairperson Fox:** Said the Commission understands the pressure and the scrutiny that the Division comes under. I have had this discussion with Mr. Long, and he also sees the value in written exams. It's a conundrum for the Division. **Commissioner Sanchez:** Stated he would like to hear from Mr. Long.

Peter Long: Shared he believed that an appropriately constructed written exam does a better job of determining on-the-job success than a simple application evaluation or a T&E. When he first started with the Department of Personnel, and then the Division of Human Resource Management, they used an organizational psychologist to develop their written exams. When that position went away, the Division moved to a test development unit that developed the test and looked for the bad questions and the adverse impact during the exam process. When that unit was downsized, we went with one analyst who developed the exams and outsourced the questions to an outside company where the Division got questions to create the exams. Over time, exams became more generic and could be used for multiple job classes in State service. The Division ended up with 27 written exams to test for 1300 various job classes. Over the years, the ability to create and deliver very specific written exams diminished. When the written exams were eliminated through the budget process, the ability to select the best qualified people for the job was diminished.

X. DISCUSSION AND ANNOUNCEMENT OF DATES FOR UPCOMING MEETINGS. NEXT MEETING SCHEDULED FOR DECEMBER 7, 2018.

Chairperson Fox: After deliberation advised the Commission that the next meeting is scheduled for Friday, March 8, 2019.

XI. COMMISSION COMMENTS

Chairperson Fox: Announced that Deputy Administrator Shelley Blotter is retiring from State service and that she is sad about this because Ms. Blotter is such a nice blend of professionalism, getting her point across, listening to opposing points of view and tying it up in a nice bow that we can all understand. This is going to be tough on the Commission because Ms. Blotter brought to her staff a high level of explaining the issues, training staff, moving items forward, and affecting change. I will miss her and wished her the best in retirement.

Shelley Blotter: Expressed her gratitude for being able to work with such a fabulous Commission and that it had been a joy. I appreciate the support and years that we had together and the good work that was done. I am looking forward to the future for hobbies and family time.

Commissioner Sanchez: Declared he would miss Ms. Blotter the most. He said that even though he was the "biggest pain" to the Commission, Ms. Blotter always treated him with dignity and settled him down. He thanked Ms. Blotter so much for her service to the State.

Commissioner Spurlock: Said he always appreciated Ms. Blotter's professionalism during his briefings before formal meetings. She had a true understanding of the field, welcomed all of his input during phone briefings and he is going to miss her, too.

Commissioner Mauger: Thanked Ms. Blotter for letting him pick her brain for knowledge and information over the years. He praised her professionalism and willingness to help others. He wished her a happy retirement.

Peter Long: Thanked Chair Fox for giving him the opportunity to speak during the Commission comments. He shared that he and Ms. Blotter “grew up” together with DOP and DHRM. He lamented that across State service, long-term employees are leaving, and institutional knowledge is walking out the door. The relationships Ms. Blotter developed allowed their division to do their job based on the trust earned with the Commission and the agencies being served; Ms. Blotter can never be replaced. Mr. Long said the thing he will miss the most was Ms. Blotter’s ability to keep him in line and to help him not get in trouble. The person who will be taking Ms. Blotter’s place was going to have big shoes to fill and introduced the person who would be filling those shoes, Mr. Frank Richardson.

Frank Richardson: Stated he had worked in both the private- and public-sectors in HR management and is eager to get started. He said it was an honor to replace Ms. Blotter and he would do his very best to follow in her pathway to create an office that remains professional and responsive to the needs of the Commission.

Chairperson Fox: Closed by saying the Commission wished Ms. Blotter the best. If Ms. Blotter approached retirement like she approached working with the Commission and the Division, she was going to have a great retirement.

XII. PUBLIC COMMENT

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

Peter Long: Announced that in honor of Ms. Blotter cupcakes were available to those in the north.

XIII. ADJOURNMENT

Chairperson Fox: Adjourned the meeting.