

**STATE OF NEVADA
PERSONNEL COMMISSION**

Carson City at the Legislative Building, Room 3138, 401 South Carson Street, and in Las Vegas at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue via videoconferencing

**MEETING MINUTES
Friday, December 9, 2011**

**COMMISSIONERS PRESENT
IN CARSON CITY:**

Ms. Katherine Fox, Chairperson
Mr. Mitch Brust, Commissioner
Mr. David Read, Commissioner

**STAFF PRESENT IN
CARSON CITY:**

Ms. Teresa J. Thienhaus, Administrator, Division of Human Resource Management
Ms. Shelley Blotter, Deputy Administrator, Division of Human Resource Management
Mr. Peter Long, Deputy Administrator, Division of Human Resource Management
Ms. Cameron Vandenberg, Deputy Attorney General

**COMMISSIONERS PRESENT
IN LAS VEGAS:**

Mr. Gary Mauger, Commissioner
Mr. David Sanchez, Commissioner

I. OPEN MEETING

Chairperson Katherine Fox opened the meeting at 9:07 A.M.

II. ADOPTION OF THE AGENDA Action Item

MOTION: Move to approve the adoption of the agenda
BY: Commissioner Mauger
SECOND: Commissioner Brust
VOTE: The vote was unanimous in favor of the motion.

III. PUBLIC COMMENT Non-Action Item

Public Comment notice: read into record by Chairperson Katherine Fox.

PERSONNEL COMMISSION MEETING

December 9, 2011

Glenn Marr – requests that his statements from the November 18, 2011 meeting be added to the minutes of this meeting. Also requests Nevada Rules of Professional Conduct be attached; requests from Deputy Attorney General Cameron Vandenberg to answer questions regarding his position with Mr. Kockenmeister and where he is to go from here. Ms. Vandenberg has received his questions.

IV. Adoption of Minutes of Previous Meetings dated September 28, 2001 and November 28, 2011.

Minutes adopted. Moved & Second – motion passes. Commissioner Read was not present for November 18th meeting.

V. Approval of Prohibitions and Penalties:

Item A: Prohibitions and Penalties for the Department of Administration

Amy Davey - Item A are revised P&Ps. Personnel Officer Renee Travis is here to provide you with additional information.

Commissioner Brust - question regarding section F2 of page 4. Asked if “injury to a person” should be included in this item? The agency agreed to include this in F2.

Chairperson Fox - questioned the range of discipline for D2 and D3 and the consistency with other P & P’s being presented.

Commissioner Sanchez - questioned P & P regarding gifts to employees and if there is a de minimis rule regarding excepting gifts. It was clarified that the gift noted did not include candy, popcorn or other small items that can be shared among all the staff.

MOTION: Move to approve the Prohibitions & Penalties for the Dept. of Administration with the revision to item F2 stating: “Operating a state vehicle or equipment in an unsafe or negligent manner resulting in injury to a person, damage to the equipment or to the property”.

BY: Commissioner Brust

SECOND: Commissioner Read

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

Item B: Prohibitions and Penalties for the Nevada State Office of Energy

Amy Davey - revised Prohibitions and Penalties for the Nevada State Office of Energy. Personnel Officer Renee Travis will also be representing these P&Ps as her office provides human resources support for some agencies within the Office of the Governor. These are identical to P&Ps for Department of Administration so any recommended changes will need to be made in both documents.

PERSONNEL COMMISSION MEETING

December 9, 2011

Renee Travis - said that the same change to the Administration's P & P would be acceptable to include in these P & P's. Additionally the same introductory pages describing the progressive disciplinary process would be used for these P & P's.

MOTION: Move to approve the Prohibitions & Penalties for the Office of Energy with the change to F2 to read: "Operating a state vehicle or equipment in an unsafe or negligent manner resulting in injury to a person, damage to the equipment or to the property". Additionally, the Department of Administrations introductory pages would be mirrored in these P & P's.

BY: Commissioner Brust

SECOND: Commissioner Read

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

Item C: Prohibitions and Penalties from the Nevada System of Higher Education

Amy Davey - are revised Prohibitions and Penalties from the Nevada System of Higher Education. The Nevada System of Higher Education includes 7 institutions and responsibility for human resource functions is provided by HR professionals working at a number of locations. These P & P's were produced as a coordinated policy to represent all NSHE institutions with classified state employees. Tim McFarling, Assistant Vice President of Human Resources for UNR and Larry Hamilton, Chief Human Resources Officer for UNLV are present to answer your questions.

Commissioner Brust - asked if making the same change in F6 as was previously discussed would be acceptable. Tim McFarling for NSHE agreed to the change.

Chairperson Fox - asked about C5 - behavior toward other and F3 asking for clarification and consistency between these items. Tim McFarling said that NSHE could make F3 parallel to C5.

MOTION: Move to approve the Prohibitions & Penalties for the Nevada System of Higher Education with changes to F3 to make the range from 3 to 5 and F6 to read: "Operating a NSHE vehicle or equipment in an unsafe or negligent manner resulting in injury to a person, damage to the equipment or to the property".

BY: Commissioner Brust

SECOND: Commissioner Mauger

VOTE: The vote was unanimous in favor of the motion. (Commissioner Sanchez abstained from vote due to being an adjunct professor.)

Item D: Prohibitions and Penalties for the State Controller's Office

Amy Davey - new Prohibitions and Penalties for the State Controller's Office. Chief Deputy Controller Susan Hart and staff at the Controller's Office worked with me to produce their P&Ps and were very responsive to input. Susan Hart is here to answer your questions about P&Ps for the Office of the State Controller.

PERSONNEL COMMISSION MEETING

December 9, 2011

Commissioner Brust - Asked if the State Controller's Office would be willing to amend item F2: to the first offense that the discipline could range from a minimum of a level 1 to a maximum level of a 5. As well as adding: "Operating a state vehicle or equipment in an unsafe or negligent manner; resulting in injury to a person, damage to the equipment or to the property". Item J3: discrimination & harassment: increase the discipline to a range of a minimum of a level 2 to a maximum level of 5. Susan Hart for the Controller's Office agreed to these revisions.

MOTION: Move to approve the Prohibitions & Penalties from the State Controller's Office with the changes to the ranges of F2 to a 1-5 and J2 to 2-5, and including language that reads "Operating a state vehicle or equipment in an unsafe or negligent manner; resulting in injury to a person, damage to the equipment or to the property".

BY: Commissioner Read

SECOND: Commissioner Sanchez

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

Item E: Prohibitions and Penalties for the Commission on Mineral Resources

Amy Davey - introduced new Prohibitions and Penalties for the Commission on Mineral Resources. Even though the Commission on Mineral Resources employs a very small number of classified employees they quickly responded to the new statute by preparing the P&Ps you have before you today. Deputy Administrator Doug Driesner and Valerie Kneefel are present to answer any questions.

Chairperson Fox - had a question about H2. Asked what would happen if an employee's driver's license was suspended and the license was an essential function of the job. Would it disqualify the employee from employment?

Shelley Blotter - NAC 284.646e allows an agency to immediately terminate an employee who loses his license when the license is an essential function of the job.

Commissioner Brust - asked if section F2 could be amended to say "Operating a state vehicle or equipment in an unsafe or negligent manner; resulting in injury to a person, damage to the equipment or to the property". Valerie Kneefel agreed to the revision.

MOTION: Move to approve the Prohibitions & Penalties from the Commission on Mineral Resources with change to F2 to read "Operating a state vehicle or equipment in an unsafe or negligent manner; resulting in injury to a person, damage to the equipment or to the property".

BY: Commissioner Brust

SECOND: Commissioner Sanchez

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

VI. ADOPTION OF REVISED HEARING OFFICER RULES OF PROCEDURE

PERSONNEL COMMISSION MEETING

December 9, 2011

Amy Davey - presented revised Rules of Procedure for consideration. The Hearing Officer Rules of Procedure were approved by the Commission in May of 2010 and have brought continuity and clarity to the employee appeals and hearing process.

The Hearing Officer Rules of Procedure you have before you today include revisions based on issues that have come about or have been suggested to us in the past year and a half. Some of these revisions are simply housekeeping issues and some will make changes to the process. Since preparing and submitting these to you we have been advised of a necessary change to Section 10.7 and ask that if you approve the revised Hearing Officer Rules of Procedure today you do so with this change; that the first sentence of section 10.7 state "A petition for rehearing or reconsideration must be filed within 15 days after the date of the service of the Hearing Officer's decision".

Revisions to the procedures include:

- Changing references from the "Department of Personnel" to the "Division of Human Resource Management"; this is a housekeeping change.
- Amending Section 1.3. The Nevada Rules of Civil Procedure have specific application to court proceedings in the judicial branch of the State and do not serve the employee appeal process governed by NRS 284. Therefore we are recommending removal to avoid any confusion or unnecessary requirements. NRS 233B is the Nevada Administrative Procedures Act and is cited in NRS 284.390 to govern petitions for judicial review of a hearing officer.
- Section 2.2 a.(5) Assignment of Hearing Officers was submitted to you as revised to allow 5 working days for each party to return their strike list selection. Since submitting these to you we have received a request from the Attorney General's Office to allow 7 working days for return of the strike list. This helps ensure that appeal hearings are granted within the 20 days required by NRS 284.390 and allows more time for parties to meet the requirement. If you approve the Hearing Officer Rules of Procedure today it will include this change, from 10 to 7 working days.
- This revision to Section 10.3 clarifies that Hearing Officers may provide recommendations consistent with their findings and within the guidelines of Agency P&Ps, NRS and NAC to appointing authorities when reversing a disciplinary action. Legal counsel is prepared to give input on this point.

DAG Vandenberg - has researched and found that if the hearing officer finds that it's not going to serve the good of the public service to discipline the employee in the manner proscribed by the agency, e.g., termination, that he/she is typically recommending what would have been an allowable level of discipline. In a 1999 District Court case, it was determined to be allowable for the Hearing Officer to make a recommendation regarding the appropriate level of discipline. To date, the Nevada Supreme Court has not ruled specifically on this issue but has upheld decisions where a recommendation by the Hearing Officer of the appropriate level of discipline was a component of the decision. A recent Nevada Supreme Court decision did uphold the ability of a Hearing Officer to clarify his or her decision and she feels that this decision supports the Hearing Officer's authority to reconsider their decision.

PERSONNEL COMMISSION MEETING

December 9, 2011

Ron Cuzze (south) – states that the Hearing Officer does not have authority to make a recommendation of the level of discipline. Believes the Hearing Officer decisions should be up or down. He feels that the Personnel Commission should be involved in the hearing process again.

Rick McCaan (south) law enforcement association representative – he felt based on the Hearing Officer interviews that the Commission had a clear point of view that it wasn't within the Hearing Officers scope to make recommendations regarding the appropriate level of discipline. He questioned why we would allow the Hearing Officers who have focused on the facts of the case and in some cases the improprieties of the agency to then return to the agency the ability to discipline the employee even if it is to a lesser degree than was originally imposed. He feels there is inequity in that process.

Commissioner Mauger – states that it sounds like double jeopardy where the employee gets acquitted of the wrong doing but then still subject to a lower level of discipline.

Commissioner Sanchez – asked if the Hearing Officers are given any direction about their conclusions.

Shelley Blotter – Rules of Procedure being presented lay out what a Hearing Officer could and couldn't do along with the statutes. The Hearing Officers' decision would stand. The recommendation is just that, a recommendation and guidance to what is acceptable discipline. An agency can follow, but is not required to do so. Expressed concern that to not allow a form of discipline when a termination is overturned may cause a chilling effect regarding discipline because agencies may be concerned that they won't be able to discipline at all if they overshoot what a Hearing Officer believes to be the appropriate level of discipline.

Mark Evans – frequently Hearing Officers uphold certain charges and throw out others. Not always double jeopardy. Hearing Officer may say the charge that resulted in dismissal is not upheld but the other charges are and the recommendation for discipline is related to those lesser charges.

Rick McCaan – stated that the recent decision by a Hearing Officer was not a recommendation; it was remanded back to the employer for appropriate discipline.

DAG Vandenberg – brought to the attention of the Commission a regulation which already contemplated this issue, NAC 284.818. It states "At the conclusion of the hearing, the hearing officer shall take the case under submission and shall notify the parties in writing within 30 days from the date of the hearing of the hearing officer's findings and recommendation." This regulation provides further support that recommendation by the Hearing Officer are appropriate. She also commented if a Hearing Officer decision is inappropriate for any reason, the remedy is judicial review.

Rick McCaan – agree that there is an appellate process, but in the meantime an employee's life has been destroyed. Employers need to be made accountable.

PERSONNEL COMMISSION MEETING

December 9, 2011

Ron Cuzze – we have seen in the past where a Hearing Officer said termination was not appropriate and why, but don't send the whole thing back to the employer for a do-over.

Commissioner Mauger – asks for clarification about the process after the hearing. He stated it seemed like double jeopardy.

Rick McCaan – described the hearing process.

Ron Cuzze - the Commission needs to be between the Hearing Officer and the District Court – at least review or approve or disapprove the decision.

Administrator Thienhaus – many years ago the Personnel Commission did do a review.

Amy Davey – a legislative subcommittee studied the Department of Personnel and released a summary of recommendations in 1981. Its recommendation was due to the amount of time required for the PC to review cases that another process be found.

Mark Evans – recommended looking at the proposed language in the Hearing Officer Rules of Procedure 10.3 which states a Hearing Officer may make a recommendation regarding the appropriate level of discipline. He suggested that the language could be revised to say that a Hearing Officer “shall” make a recommendation regarding the appropriate level of discipline.

Commissioner Sanchez – stated that the employee's association seems to be saying that the Hearing Officers aren't making a decision and instead they are just remanding it back to the agency. He asked what Hearing Officers are guided by regarding making decisions.

Mark Evans – there isn't a rule in place currently and adding this section would provide direction.

DAG Vandenberg – Hearing Officers are guided by case law; NRS 284 also guides them.

Ron Cuzze – stated that Hearing Officers are there to make decisions and not recommendations; they should not send it back to the employer.

Rick McCaan – asks how long are we going to keep giving recommendations and throwing it back to the employer? Hearing Officers are deciders.

Tim McFarling (NSHE) – the previous discussion was about prohibitions and penalties and it was pointed out that there has to be a range of discipline and flexibility. These hearings are not a court of law and the process is different. Employers are required to determine what the appropriate discipline is. The crux of the matter is about employee relations and do we have a right and fair way to ensure that we receive the right decision.

Priscilla Maloney (AFSCME LOCAL 4041) – has a case where a request for clarification of a Hearing Officer's decision has been made. She suggested the Commission may wish to pull this agenda item for further discussion. She wants AFSCME's staff attorney to review.

Commissioner Mauger – where is the fairness to the employee when actions take so long?

Amy Davey (last bullet item) - providing information regarding deadlines for requests for reconsideration of a decision. Section 10.7 has been amended to mirror language found in NRS 233B with regard to provisions for petition for judicial review. In this section we ask that you adopt the Rules of Procedure with the added language “rehearing or reconsideration”.

Administrator Thienhaus – received an e-mail from Chief DAG Ann McDermott regarding Rule 2.2 sub-section A-5 in reference to strike list. It reads:

“Please except this email as formal comment regarding the proposed changes to the hearing officer assignment rules. The current provision of 10 days to respond to the assignment list of hearing officer provides our clients with an appropriate time for our clients to become aware of an appeal, conduct their due diligence on the appeal, and consult with assigned counsel on the matter. With personnel staffing and availability such that it is, the 10 days are warranted for employers to be able participate in this process. In the event that this timeframe is shortened, it is requested that it be minimally shortened so that the employers are not prejudiced in their defense of these matters. Thank you, Chief Deputy Attorney General Ann McDermott, Personnel Division, Nevada Attorney General’s Office.”

Additionally, they had a conversation and Chief DAG McDermott did agree reducing it to seven days to return a strike list.

Commissioner Brust – he was the Commissioner that has been asking the question about how the Hearing Officer candidates interpreted NRS 284.390 and he feels it is clear on its face that Hearing Officers shall make a decision that is either up or down. Hearing Officers should not make a recommendation for other discipline since they are not familiar with the department and would not know what the impact would be to the morale to employees or the equity of other disciplinary actions taken by the employer.

MOTION: Move to approve the Hearing Officer Rules of Procedure with changes with a change to the 2nd sentence in 10.3 – “The Hearing Officer shall not impose or recommend a lower level of discipline than that was imposed by the appointing authority.”
BY: Commissioner Brust
SECOND: None. Motion fails and will not be voted on.

MOTION: Move to approve the revised Hearing Officer Rules of Procedure specifically changing references from the Department of Personnel to the Division of Human Resource Management; amending section 1.3; reducing the time allowed to return the strike list from 10 days to 7 days – providing information regarding deadlines for requests for re-hearing or reconsideration (within 10.7 of rules). Finally, to leave current rule in place and not adopt additional statement in 10.3.

PERSONNEL COMMISSION MEETING

December 9, 2011

BY: Commissioner Mauger
SECOND: Commissioner Read
VOTE: The vote was 4 in favor of the motion with Commissioner Fox voting against the motion. The motion passed.

Shelley Blotter – provided information about the training and orientation provided to the current and newly appointed Hearing Officers.

BREAK – 10 MINUTES

VII: APPROVAL OF PROPOSED REGULATION CHANGES TO NEVADA ADMINISTRATIVE CODE, CHAPTER 284

REGULATIONS PROPOSED FOR PERMANENT ADOPTION - LCB File No. R026-11

Amy Davey - in Item VII, we would like to remove Section 3 of LCB file R026-11 from consideration in order to allow for more discussion and consensus building between parties interested in these processes.

A: File number R026-11, section 1, is new language to provide for a resolution conference after Step 3 in the grievance process if requested by an employee or department administrator or his or designee. The resolution conference model was requested by employee associations in lieu of the original language in Assembly Bill 354 of the 2011 Nevada Legislature which would have replaced the Employee-Management Committee with a paid arbitration system.

A resolution conference can be requested by either party in a grievance if a satisfactory resolution has not been reached at Step 3 or sooner and grievance has been escalated to Step 4. The Division of Human Resource Management will be responsible to appoint a neutral facilitator to conduct the conference. The resolution conference will not interrupt the time allowed for a grievant to request a hearing before the EMC.

Procedures for requesting and participating in a resolution conference have been developed by the Division and are available for your review.

Chairperson Fox – asks who would be the neutral facilitators?

Amy Davey - neutral facilitators could be staff from the Division, a Subject Matter Expert such as someone from Payroll department, a trained mediator or an HR Officer from a state agency other than the employee's own agency.

Section 2 aligns language in regulation with NRS 284.384 as amended by AB 354 to clarify that where a hearing process is provided for by federal law or other hearing processes defined in NRS 284 the grievance process shall not be used. This helps provide direction to the appropriate forum to resolve employment issues.

PERSONNEL COMMISSION MEETING

December 9, 2011

The proposed amendments to Section 4 will remove specific procedural requirements for EMC hearings from regulation and will allow the EMC to adopt rules for their hearings. Removing lengthy procedures from NAC is also consistent with the Governor's executive order regarding State regulations.

Section 5 amends a reference to provide consistency with other changes.

Section 6, this amended language aligns reporting of alleged unlawful discrimination with the provisions of NRS 284.384.

Section 7, outlines effective dates for the regulations described above.

Mark Evans – recommended pulling from consideration section 5 as it relates to section 3 which has already been pulled from consideration.

Ron Cuzze – what parameters do the resolution arbitrators have?

Amy Davey – the role is to facilitate a discussion; review materials or to point out items parties have not considered. Not serving as hearing officers; just listening and may potentially provide new incite. Would not render a decision.

Kareen Masters, Deputy Director, DHHS – feels that there are some situations which should not be subject to the resolution conference and recommended an amendment. She also recommended a second change which would time limit for notification for a failed agreement such as 3 days prior to the scheduled hearing date.

Chairperson Fox – does DHRM want that much more procedural rules for what is meant to be an informal process?

Amy Davey – agreed that there are times when management may be well within their rights to take the action they did but what was made clear by the employees association is that their members would like for someone in a position of authority to just be able to listen to their concerns. Either party can call for a resolution conference; the employer may also ask for a resolution conference. In terms of 4b as far as time limits; more about the consequences of the failed agreement than the time limit. This is the employee's grievance – employees' responsibility to forward the grievance if management failed to uphold their agreement. Management has the authority to discipline an employee who does not uphold there agreement.

Shelley Blotter – Stated that the parties come to an agreement together and that it doesn't anticipate that notification of the failed agreement would have to occur prior to the hearing date. The resolution agreement could fail after that hearing date. Additionally, the neutral facilitator is not a decision maker so would not and should not have a role in deciding whether there should or should not be a resolution conference if one of the parties does not wish to participate.

Kareen Masters – Still expressed concerns. Stated that she understood that the neutral facilitator would not be making a decision but should be able to point the suggested amendment language to immediately send the grievance to the EMC. She recalled the discussion at the

PERSONNEL COMMISSION MEETING

December 9, 2011

workshop which included whether both parties should agree to meet for a resolution conference and that most agencies did meet with an aggrieved employee during the grievance process. Suggests that there be language which would only require a resolution conference if there had been no meeting at step 1, 2 or 3 in the grievance procedure. Feels that it is important to have a time certain in which an agreement fails and it could go directly back to the EMC.

Shelley Blotter – Agreed if management and the employee have been meeting throughout the grievance process and the employee had the opportunity to meet with a high level decision maker that it would be highly unlikely that the employee would ask for a resolution conference. Unfortunately there are still some agencies which are not doing this or they have delegated the responsibility to handled grievances down to a lower level in the organization and the employee feels they have not been heard.

Ron Cuzze – Some employees just do not understand and the employee wants to file a grievance even when the employee association does not recommend it. This will be a management tool as well as an employee tool.

Commissioner Sanchez – it reminds him of the mediation services that are available. No need for further structure than what is being presented at this point.

Kay Shearer, EMC Chairman – Has concerns about sub 4b and that the issue could come back to the EMC at any point in the future if the agreement fails. She feels that this does not provide for a timely resolution to grievances and that if much time has passed the original issues may be unclear or the involved parties may no longer be employed which may make the issue difficult to deal with.

Priscilla Maloney – Suggested that part of the resolution conference procedure or an amendment to 4b could be to come up with a time limit for when the resolution would have to be in place.

MOTION: Move to approve NAC 284 - LCB File No. R026-11 sections 1, 2, 4, 6 and 7 as written.
BY: Commissioner Read
SECOND: Commissioner Sanchez
VOTE: The vote was unanimous in favor of the motion.

B: LCB File No. R027-11

Amy Davey - LCB File No. R027-11 section 1 proposes new language that ensures that an impartial fact-finding investigation occurs prior to a disciplinary suspension, demotion or dismissal of a permanent classified employee. Employee association representatives agreed that this would address the concerns they intended to resolve through Assembly Bill 179 as originally submitted. Additionally, this language allows an employee to waive an investigation if the employee agrees in writing with the allegations and can help avoid a lengthy and stressful investigation process.

Sections 2 & 3 add reference to the new regulations regarding impartial investigations.

Section 4 amends NAC 284.742 to make it consistent with NRS 284.383 that provides the foundation for required Prohibitions and Penalties. Statute requires appointing authorities to identify prohibited acts, possible violations and penalties and provide this information to permanent classified employees in a policy approved by the Commission. Additionally, this policy must include reference to the process of progressive discipline used which conforms to the provisions of progressive discipline outlined in NAC. Employees must receive a copy of this policy and an updated copy if and when it is revised. Agencies were notified of the requirements of AB 179 by the Division on June 27, 2011 through PERD #31/11 and again on August 9th in a Legislative Summary provided by the Division. If adopted these regulations would become permanent upon filing with the Secretary of State.

Ron Cuzze – regarding fair and impartial hearing; what constitutes an impartial investigation? Not fair to employees the way it is written – leaves too much to be interpreted. How are you going to ensure it is an impartial investigation? Suggested a pre-disciplinary hearing officer be from outside the organization.

Amy Davey – if the employee felt that the investigation was not impartial that could be part of the appeal to the Hearing Officer. Clarified that this regulation is addressing the investigation and not the pre-disciplinary hearing.

Commissioner Sanchez – Asked if the impartial hearing officer be from within the agency or outside of the agency in cases of sexual harassment.

Amy Davey – Clarified this is not a hearing processes and the Sexual Harassment/Discrimination Investigation Unit within the Division of Human Resource Management would conduct these types of investigations.

Priscilla Maloney, AFSCME - supports section 1 changes as written. Expressed concern by her members in which agency policies were being presented to employees this last summer regarding restrictions on outside employment, some of which included volunteer activities. She read into the record an employee letter from an employee:

“As a state employee with 17 years of service, I’ve always recognized that my conduct as a citizen of Nevada has potential to reflect on all Nevada state employees. I understand that agencies must strive to avoid of even the appearance of impropriety. As a result I recognize that my agency should have the right to bar me from outside employment that looks like it could even create a conflict of interest. As an employee of Nevada’s Job Connect if I took a weekend job at a staffing agency and then referred all of my clients to that agency where I then hired them and then took credit for placing that client in employment such conduct would be unethical if not illegal for a number of reasons. That said I’m not in favor of my agency forcing me to seek permission of my agency director on a yearly basis if I wish to volunteer community assistance to such entities as the Crisis Call Center or Friends In Service Helping in a neighborhood school. My agency has every right to direct my conduct during working hours. If the temp agency

PERSONNEL COMMISSION MEETING

December 9, 2011

scenario mentioned earlier were happening, my agency would have every right to stop it. I do not understand why personnel officials can't review conduct on a case-by-case basis rather than attempt to control the actions of all employees based on what could be happening theatrically. It amounts to using a chainsaw where tweezers would be appropriate. In theory Job Connect is there serve every employer and job seeker in Nevada. As a result do I give up my right to earn extra money as a seasonal retail employee without specific approval of my agency director before work in a state agency that could potentially list a job opening for that store? If so it seems hardly fair."

She went on to say that this person is concerned about enumeration, but others are concerned about privacy especially when the employee may be volunteering for a faith based organization.

Shelley Blotter – Stated that it was the legislature this last session that was concerned about employees with secondary employment and they wanted to ensure that employees with secondary employment were not reporting the same hours they work for the State and another employer. As a result the Department of Administration formed a committee to review these situations and have subsequently developed forms and procedures to request approval of secondary employment which are included in the State Administrative Manual. Volunteer work is not addressed in the State Administrative Manual changes nor is it addressed in the regulations you are being requested to approve today.

MOTION: LCB File No. R027-11, sections 1, 2, 3, & 4
BY: Commissioner Brust
SECOND: Commissioner Read
VOTE: The vote was unanimous in favor of the motion.

Chairperson Fox – asks Ms. Blotter to speak in regards of the Adoption of Revised Hearing Officer Rules of Procedure.

Shelley Blotter – asks the Commissioners in which direction they would like the Division to go in to review the portion of the Hearing Officer Rules of Procedure that wasn't adopted today. Would the Commission like for the Division to hold workshops or for staff to research additional information?

Commissioner Brust – feels that staff, associations and division heads should meet and come up with guidelines for Hearing Officers on how to decide cases.

Commissioner Read – has legal concerns. Not sure what the Hearing Officers' can legally do and the Commissioners have a difference of opinion of what the law really allows. Wants regulations that codify what is consistent with the law.

DAG Vandenberg – believes that the determination will need to be made on a District Court level. The remedy for any aggrieved party is judicial review. She has provided points and authorities which would support Hearing Officers providing a decision and recommendations.

PERSONNEL COMMISSION MEETING

December 9, 2011

Chairperson Fox – indicated that no additional research or meetings need to be held regarding this issue.

VIII: Report of Uncontested Classification Changes – Posting #03-12

Requires no action – reported.

IX: Special Reports

Shelley Blotter – the Legislative Commission overturned the regulations adopted by the Commission which would have discontinued the ability for employees to accrue comp-time for standby and holiday premium pay.

Chairperson Fox – requests more information in the future regarding the state’s plans to centralize HR programs/activities.

Administrator Thienhaus – announces new Administrator Lee-Ann Easton. December 16th will be my last day; appreciates the years of working with the Commission and staff.

Chairperson Fox – on behalf of the Commission – welcomes Lee-Ann.

Lee-Ann Easton – looks forward to the future – great honor.

Commissioner Sanchez – welcomes and congratulates Ms. Easton and invites her to meetings in Las Vegas.

Chairperson Fox – presents Administrator Thienhaus with a 12-year of service gift and certificate of appreciation.

Commissioner Read – appreciates her leadership. The department and employees are much stronger now than when he joined the Commission.

Commissioner Sanchez – appreciates your level of professionalism and best wishes.

Commissioner Brust – acknowledged Division Administrator Thienhaus’ leadership and supervision of staff and professionalism with her dealings with the Commission.

Commissioner Mauger – also acknowledged her professionalism and wished her well.

Administrator Thienhaus – Thanks everyone.

X. PUBLIC COMMENT Non-Action Item

Public Comment notice: Read into record by Chairperson Katherine Fox. No public comment.

XI. Announce Dates for Upcoming Meetings

PERSONNEL COMMISSION MEETING
December 9, 2011

Friday, March 16, 2012 and Friday, May 18th, 2012 (tentatively set).

XII. ADJOURNMENT

MOTION: Move to adjourn at 12:03 pm
BY: Commissioner Read
SECOND: Commissioner Brust
VOTE: The vote was unanimous in favor of the motion.

During the 12-9-11 PC Meeting, a request for the **Nevada Rules of Professional Conduct** to be included within the minutes from the meeting:

<http://www.leg.state.nv.us/CourtRules/RPC.html>