

**STATE OF NEVADA
PERSONNEL COMMISSION**

Gaming Control Board, Conference Room, 1919 College
Parkway, Carson City, with videoconferencing to Las Vegas
at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 E. Washington Ave.

**MEETING MINUTES (Subject to Commission Approval)
Friday, March 12, 2010**

**COMMISSIONERS PRESENT
IN CARSON CITY:**

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

**STAFF PRESENT IN
CARSON CITY:**

Ms. Cameron Vandenberg, Deputy Attorney General
Ms. Shelley Blotter, Division Administrator, Department of Personnel
Mr. Peter Long, Division Administrator, Department of Personnel

**COMMISSIONERS PRESENT
IN LAS VEGAS:**

Mr. David Sánchez, Commissioner
Ms. Daryl Ann Moore, Commissioner

**STAFF PRESENT
IN LAS VEGAS:**

Ms. Teresa J. Thienhaus, Director, Department of Personnel
Mr. Mark Anastas, Division Administrator, Department of Personnel

I. OPEN MEETING

Chairperson Katherine Fox opened the meeting at 9:00 A.M.

II. *ADOPTION OF THE AGENDA

MOTION: Move to approve the adoption of the agenda
BY: Commissioner David Read
SECOND: Commissioner Daryl Ann Moore
VOTE: The vote was unanimous in favor of the motion.

III. * ADOPTION OF MINUTES OF PREVIOUS MEETING DATED DECEMBER 17, 2009

PERSONNEL COMMISSION MEETING

March 12, 2010

MOTION: Move to adopt the minutes of previous meeting dated
December 17, 2009
BY: Commissioner David Read
SECOND: Commissioner Katherine Fox
VOTE: The vote was unanimous in favor of the motion

IV. *APPROVAL OF PROHIBITIONS AND PENALTIES

Amy Davey: Personnel Analyst, Department of Personnel stated that the Prohibitions and Penalties under consideration for the Nevada Department of Wildlife, and while there are a few individual items in this proposal that are unique to the agency these items are similar in nature to others in the Prohibitions and Penalties. The Department of Personnel finds that these Prohibitions and Penalties are consistent with those previously approved by the Commission for other state agencies.

Kris Ross and Kim Jolly from the Department of Wildlife are present to answer any questions you may have.

MOTION: Move to approve the prohibitions and penalties for the Department
of Wildlife
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Sánchez
VOTE: The vote was unanimous in favor of the motion

**V. *APPROVAL OF PROPOSED REGULATION CHANGES TO NEVADA
ADMINISTRATIVE CODE, CHAPTER 284**

Mark Evans: Supervisory Personnel Analyst, Department of Personnel stated the first regulation change is LCB File R189-09 and is a simple housekeeping change. It amends NAC 284.506 which states that the Administrative Services Division of the Department of Personnel is responsible for various training functions. The Office of Employee Development which provides the training activities is no longer part of Administrative Services and is now part of Employee and Management Services. This change removes reference to a specific division and states these services are the responsibility of the Department of Personnel.

MOTION: Move to approve LCB file number R189-09
BY: Commissioner David Read
SECOND: Commissioner David Sánchez
VOTE: The vote was unanimous in favor of the motion

Mark Evans: Supervisory Personnel Analyst, Department of Personnel went over LCB file number R191-09 that relates to filing a grievance related to performance evaluation. The current language does not provide clear guidance as to who can be bypassed in the grievance process in an evaluation. Also, in past regulation workshops and Personnel Commission meetings concerns

PERSONNEL COMMISSION MEETING

March 12, 2010

have been raised about referring to the appointing authority since various positions can serve in this capacity. The language clarifies that individuals were involved the writing or the review of the evaluation can be bypassed in the grievance process.

MOTION: Move to approve LCB file number R191-09
BY: Commissioner David Read
SECOND: Commissioner Daryl Ann Moore
VOTE: The vote was unanimous in favor of the motion

Carrie Hughes: Personnel Analyst, Department of Personnel stated that LCB File No. R193-09 proposes a permanent amendment to NAC 284.888. This amendment will add workplace accidents to the list of reasons for testing employees for alcohol and drugs based on reasonable suspicion. Employees who are under the influence of alcohol or drugs on the job present a safety hazard to themselves and others and are in violation of State policy. The amendment also proposes lowering the damage dollar amount in the definition of “substantial damage of property”. This amendment was proposed by the Department of Administration’s Office of Risk Management.

Katherine Fox: Asked if there is an alcohol breath test being done on someone who you have reasonable suspicion, what is the legal limit for alcohol?

Carrie Hughes: Replied that .01 gram by weight of alcohol per 100 milliliters or 200 liters of breath.

MOTION: Move to approve LCB file number R193-09
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion

Carrie Hughes: LCB File No. R194-09 proposes a permanent amendment to NAC 284.894. The amendment will allow for the removal, from all recruiting lists for other positions requiring pre-employment testing, of an applicant who tests positive on a pre-employment drug screening test. This will insure that the employee will not be considered for any such position with the State for up to a year in the absence of evidence of completion of a rehabilitation program for substance abuse.

Katherine Fox: Reiterated that the removal of his or her name for all relevant recruitment lists where that is a requirement in order to be hired for the position.

Daryl Ann Moore: Asked if you were aware that an applicant was tested positive and they were on a list that did not require drug testing, is there any concern of hiring this person?

Carrie Hughes: The change to the administrative code does not relate to this, however, there is concern with the use of pre-employment testing results in the public sector. There is a Ninth Circuit Court of Appeals decision speaking to that and offered to read it into record.

PERSONNEL COMMISSION MEETING

March 12, 2010

Daryl Ann Moore: Stated she was aware of the Ninth Circuit Court Appeal but was more concerned that if an individual did test positive for drugs and then they were selected from another list, would that be a liability to the State knowing you have previous knowledge?

David Sánchez: Asked who would have knowledge of a failed drug test?

Mark Evans: Answered that it would be the agency that had the knowledge and part of the reason for this change is our Recruitment and Retention Division expressed a concern that an appointing authority had tested someone and did not report it back to the Department of Personnel then other agencies that were hiring from that list or other lists would be hiring someone who had previously failed a drug and alcohol test for a position that did require that testing. The other departments hiring for these positions would not know the person's name, they would just be removed from the list. They will not be removed from all lists only those positions requiring a drug and alcohol test.

Katherine Fox: Stressed her concern for the Department of Personnel having knowledge of the outcome of these tests and being held liable.

Shelley Blotter: Division Administrator, Department of Personnel stated that there are a couple of options and this is the best practice to remove them from the lists that require pre-employment testing. Suggested passing this as written and then go back and look at the scope of responsibility in removing them from all lists.

Cameron Vandenberg: Deputy Attorney General stated she didn't think passage of this would create any liability.

Daryl Ann Moore: Stressed her concern of the applicants remaining on all the lists that have tested positive. She indicated that without some sort of a rehabilitation program available, we would have a possible safety risk with them entering into any position.

MOTION: Move to approve LCB file number R194-09

BY: Commissioner David Read

SECOND: Commissioner David Sanchez but wanted to go on record along with Commissioner Daryl Ann Moore being concerned that all Departments are not aware of the results of positive testing.

VOTE: The vote was unanimous in favor of the motion

Katherine Fox: Asked the Department of Personnel to have this item brought back at one of the next meetings. She stated that they would like a better understanding about the liability of having factual information about applicants and what privacy stipulations are about that.

David Read: Also concerned that there are two lists, is there a possibility that everyone who works for the State of Nevada should have drug and alcohol testing. Can the Department of Personnel look at the effects of testing all employees?

PERSONNEL COMMISSION MEETING

March 12, 2010

Shelley Blotter: Clarified that the Department is being asked to look at the effects of testing all employees.

Carrie Hughes: Stated LCB File No. R195-09 proposes a permanent amendment to clarify that the employee not the employee's agency is responsible for the costs associated with counseling and documentation of that counseling as requirements to return to duty, after the employee has tested positive for the presence of alcohol or a controlled substance. This amendment was proposed by the Department of Health and Human Services and the Department of Personnel concurs.

Shelley Blotter: stated that this particular section was new to the Department and as of yet has not been assigned a number.

MOTION: Move to approve LCB file number R195-09
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Sánchez
VOTE: The vote was unanimous in favor of the motion

VI. *APPROVAL OF OCCUPATIONAL GROUP STUDY NEW/REVISED CLASS SPECIFICATIONS

Mary Day: Supervisory Personnel Analyst, Department of Personnel indicated that they have identified a class in the Education Occupational Group; the Accompanist class is no longer used by the University. They now have individuals who work on contract and as this class is no longer necessary, she recommended it be abolished. In answering a question about what the Accompanist did, she stated they work for the music department doing presentations, musical productions and work with soloists.

MOTION: Move to approve the abolishment of the Accompanist class
BY: Commissioner David Read
SECOND: Commissioner David Sánchez
VOTE: The vote was unanimous in favor of the motion

Mary Day: Indicated that they identified another class called Benefits Contract Analyst which was a single position class developed for the Public Employees Benefit Program. They no longer use this class and have moved the duties to a more generic class of Management Analyst. Recommend abolishment of this class.

MOTION: Move to approve the abolishment of the Benefits Contract Analyst class
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Sánchez
VOTE: The vote was unanimous in favor of the motion

VII. * INDIVIDUAL CLASSIFICATION APPEALS

PERSONNEL COMMISSION MEETING

March 12, 2010

Ruthann Barrette: Administrative Services Officer I, Department of Public Safety-Emergency Management Division. She indicated that she had been in this position since February of 2004. At that time the Division was very simple, there were 22 employees and now there are 37. The grants were minimal then at \$549,000 and now they are approximately \$20,000,000. And they are a multiple funding source instead of a single funding source. In addition, the agency is no longer a single budget agency but multiple budget with federal funding coming in through a pass through account. The complexity of the job has grown. She also stated that she devises many spread sheets for accuracy, improved efficiency of the agency, grants that go over several years and has trouble deciphering the balance in each federal fiscal year, so she created some good accurate spread sheets for tracking. She went on to say she is in charge of more staff now, supervising 4 people. Office of Homeland Security has been recently added to Emergency Management Division and SERC (State Emergency Response Commission). It isn't just growth it is growth in complexity. She indicated that she felt Mr. Steinberg had already made his mind up before he spoke with her. She indicated that he explained that more job duties did not mean more complexity. She didn't feel that Mr. Steinberg had the ability to determine the complexity of her job. She went on to describe all the various programs and grants that she is in charge of. She indicated that the comparison made to Criminal Justice division was not comparable.

Phil Weyrich: ASO IV, Health Division. He indicated that he has 9 years of State experience at the senior financial level and quite a few years at the Federal level working with civil service employees in federal agencies. He said he is used to reviewing classifications, reviewing the knowledge and skills that are required by a program, either federal or state, and looking at the standard and determining what it should be, writing an NPD-19 and usually getting it classified at that level. He indicated that Mr. Steinberg asked him to review Ruthanne Barrette's NPD-19, and he said that it was accurate, believes the ASO II level is appropriate. He felt the position should be compared to the ASO II position in the Health Division, which was recently upgraded to ASO III.

David Sánchez: Asked Ruthanne Barrette about a packet she submitted, referring to the introduction page. He read that she stated that there are 3 areas of change that she disagrees with from the outcome report by the Department of Personnel. He read the class specification that indicated there are 7 factors in all and asked her if she agrees with the Department of Personnel in the other 4 areas.

Ruthann Barrette: Indicated no, that the letter she sent to the Department of Personnel went over the 7 items. And she has not met with Mr. Steinberg since the beginning at the desk audit.

David Sánchez: Asked if she was familiar with the classification process.

Ruthanne Barrette: She indicated she was familiar and has scrutinized the specification. One of the things she agreed with was that "incumbents are responsible for programs which are moderate in number, complexity and diversity. The degree of authority to make decisions is more limited than evidenced by the Administrative Officer III" and "the Administrative Officer II class is distinguished from the Administrative Officer I by greater complexity of work and broader scope of responsibility". She feels that Mr. Steinberg was in error in performing this particular audit and classification procedure.

PERSONNEL COMMISSION MEETING

March 12, 2010

Daryl Ann Moore: Asked if she supervised other individuals.

Ruthann Barrette: Stated that she supervises an Accountant Technician III, Management Analyst I, indirectly she supervises an Accounting Assistant III and an Accounting Assistant II. She went on to state that when she was hired there was one direct person she supervised and two indirect. Last year one more direct supervision was added.

Frank Steinberg: Personnel Analyst, Department of Personnel. He stated that the study was done in accordance with all normal procedures that are used in the Department of Personnel. He commented on a couple of points that Ruthanne Barrette brought up. The position was not compared to positions in Criminal Justice. He was merely illustrating the point that financial record keeping for grants can be done by a variety of job classifications: Grants and Projects Analyst, Accountant Technicians, Accountants, Administrative Services Officers, Social Services Program Specialists and Health Program Specialists. The point was that financial record keeping for grants is not an inherent responsibility for ASO positions at any level. He appreciated Phil Weyrich's input and support of Ms. Barrette's appeal, but in correspondence dated July 10, 2009 he took exception to some of the entries made on her NPD-19. He went on to say that Mr. Weyrich stated that under the Grants Management he did not believe that the position control number 0007 (Ms. Barrette's position) is responsible for determining if grant requirements are being met, that is a function of the Grants Management section. He did, however, indicate that the financial management complexity did increase. Mr. Steinberg stated that the Division of Emergency Management is a small agency, 37 positions including 6 brought over from Homeland Security. Their responsibilities include obtaining, disbursing and accounting for large sums of money, mostly grants, for various aspects of emergency preparedness, disaster relief and homeland security. As indicated in the appellant's exhibit 2a, approximately 132 million dollars in grant funding was under management as of January 2010, most of which was to be passed through to other entities. The position now held by Ms. Barrette was upgraded in 2003 from Accountant Technician III, grade 34, to Administrative Services Officer I, grade 37, based on the added duty of Chief Fiscal and Budget Officer for the agency. In July of 2005 a new position of ASO III, grade 41, was established to take over as Chief Fiscal and Budget Officer or CFO for the agency. Ms. Barrette as the ASO I continued to supervise 3 fiscal and administrative personnel, later increased to 5 positions and recently cut back to 4. The principal impact on duties, of significant change since the position's previous review relates to loss of the CFO function and an increase in volume of work. Workload is not considered in the classification process nor is the quality of the incumbent's performance. The appellant's belief in increased complexity, level of responsibility and consequence of error is not supported by analysis of current and historical duties. Federal grants have always had accountability requirements and potential penalties for non performance, with compliance a joint responsibility of fiscal and program staff within the agency. With the ASO III position functioning as CFO, there was no basis for a further upgrade of Ms. Barrette's position. The internal alignment is appropriate with the highest subordinate position at a grade 34. The ASO I responsibilities for timely and accurate financial transactions and reporting are adequately reflected at the current level.

PERSONNEL COMMISSION MEETING

March 12, 2010

Dave Sánchez: Asked Mr. Steinberg to comment on Ms. Barrette's statement that the division was once simple and now it has multiple budgets and the complexity has triple with the work load and there is more staff.

Frank Steinberg: In any State agency you will find the workload has increased substantially. You will find that there are more Federal Grants now than there have ever been. The Division of Emergency Management is not exceptional in this. There is a comparable position at the Division of Aging and Disability Services of the Department of Health and Human Services, which does many of the same types of actions as Ms. Barrette's position and was recently reviewed and found to be an ASO I. It reports directly to a ASO III, a very similar structure. They handle large sums of money, 11 budget accounts whereas Ms. Barrette made reference to only 5 in her division and 37 funding sources, pass through and direct expenditure.

Dave Sánchez: Asked Mr. Steinberg to comment on Ms. Barrette questioning his ability to determine the complexity of her job. He also asked him to explain the process in which he evaluated the job and with his educational background.

Frank Steinberg: He indicated that Ms. Barrette supplied numerous documents pertaining to the functions of her job. The initial research was done on her job using the NPD-19 and historical records relating to the position as it has evolved over the years. There is a desk audit that takes 45 minutes to an hour which he indicated he spent with Ms. Barrette. At that time she provided a large number of documents and normally they would take them back to the office to read through them, rather than use the desk audit time to read. The purpose of the desk audit is to ask pertinent questions to make sure the duties are understood.

Dave Sanchez: Asked Mr. Steinberg to give the commission a educational and work history background on himself.

Frank Steinberg: Indicated he has a bachelor's degree in Political Science from UCLA. He stated he has been doing this type of personnel work since 1965. He went on to state he worked for the California State Personnel Board in the 1960's, mainly devising compensation and classification plans for cities, counties and school districts on a reimbursable technical assistance basis. They were an arm of the State Government that provided services to political subdivisions. He worked for the Federal Government for many years doing recruitment, classification, equal employment opportunity and other aspects of human resource management. He has been with the State since 1997, starting with the Department of Corrections, doing classification studies for the Department of Personnel for more than 10 years.

Dave Sánchez: Asked Mr. Steinberg how many classification studies he has done for the State of Nevada.

Frank Steinberg: Answered that he has done more than 150 in the past 10 years relating to fiscal management and staff services, which is the occupational group that Administrative Services Officers belong to. This is about half of the work load over the past 10 years, so around 300.

PERSONNEL COMMISSION MEETING

March 12, 2010

Mary Day: Stated that Mr. Steinberg is the senior analyst, and is the expert in the field for fiscal management studies that come into the office.

Katherine Fox: Asked Mr. Steinberg if he is typically assigned the ASO series.

Frank Steinberg: Answered that he is frequently assigned the ASO studies. He is not the only person who receives them but is assigned them more than the other analysts.

Katherine Fox: In 2003 this position had the responsibilities of Chief Fiscal and Budget Officer and at some point in time a grade 41 was assigned some of these duties.

Frank Steinberg: Originally there was an Accountant Technician III position, before Ms Barrette, that took care of all the records, and the Chief and the Deputy Chief of the division acted as their own Chief Fiscal Officers. In 2005 they created a Chief Fiscal and Budget Officer position which was classified as ASO III, which is the position that Mr. Weyrich was selected to fill. At that point in time the ASO I position would have been a candidate for reversion to Accountant Technician III, except that there was a subordinate Accountant Technician III position in the unit, and it would not have been good practice to have one supervising the other. At this time the ASO I was no longer the head fiscal person.

Ruthann Barrette: Indicated that her duties increased once the ASO III was added in 2006. She stated that her responsibility level has continued to increase, not decrease.

MOTION: Move to DENY the appeal of Ruthanne Barrette
BY: Commissioner David Sánchez
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion

Calvin Lemon, Facilities Manager, College of Southern Nevada

David Sanchez: Indicated that he has been a 25 year employee of the College of Southern Nevada, where he is still employed, and he would like to excuse himself from this discussion and abstain from voting on this appeal.

Cameron Vandenberg: Deputy Attorney General stated that the appeal will only be regarding the Director's decision on the classification on your particular position. Any issues related to claims of discrimination cannot be heard by the commission.

Calvin Lemon: Requested that his appeal be moved to the next meeting due to his counsel being extremely ill and unable to make it this meeting.

Katherine Fox: That will move his appeal to May 21.

MOTION: Move to reschedule the appeal to May 21
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Read

PERSONNEL COMMISSION MEETING

March 12, 2010

VOTE: The vote was unanimous in favor of the motion

Peter Long: Wanted clarification if the additional information will be included in the May 21 meeting that the appellant submitted yesterday and was unable to be heard at today's meeting.

John Mueller Executive Director, CSN indicated he would not object to the additional information being added to the appeal.

Katherine Fox: Indicated that the additional information would be allowed at the next meeting.

VIII. UNCONTESTED CLASSIFICATION ACTION REPORT

Katherine Fox: Read into record posting (s) #7-10, #8-10, #9-10 and #10-10

IX. SPECIAL REPORTS

Katherine Fox: Requested at a future meeting, information on the increase of classification requests being brought forward to the Department of Personnel, in relation to the economic conditions of Nevada. She indicated if employees will be asked to work out of class and have the belief that they have been assigned duties that are outside their class.

Teresa Thienhaus: There is anticipation in increase in NPD-19's for reasons that you have mentioned and for another reason due to the Executive Order from the Governor coming out clarifying the removal of temporary adjustments in salary and the accelerated rates at hire. The current adjustments will be rescinded, some of those are received for high level duties and we anticipate an influx in re-classification requests/NPD-19s. There will also be a hiring freeze which may cause an increase in NPD-19s due to positions being unable to be filled and those duties shifted to other employees.

Katherine Fox: Asked if September would be a better meeting for this discussion.

Teresa Thienhaus: Stated that they should be able to gather relevant information by that time.

X. COMMENTS BY THE GENERAL PUBLIC- ACTION MAY NOT BE TAKEN ON THE MATTERS CONSIDERED DURING THIS PERIOD UNTIL SPECIFICALLY INCLUDED ON THE AGENDA AS AN ACTION ITEM.

No comments from the public

XI. SUGGEST DATES FOR NEXT MEETINGS

Special meeting March 31, 2010 regarding the Hearing Officer recruitment and selection.
May 21, 2010
September 17, 2010

XII. *ADJOURNMENT

PERSONNEL COMMISSION MEETING

March 12, 2010

MOTION: Move to Adjourn at 10.37 A.M.
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion