

**STATE OF NEVADA
PERSONNEL COMMISSION**

Carson City at the Legislative Building, Room 4100, 401 South Carson Street, and in Las Vegas at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue via videoconferencing

**MEETING MINUTES (Subject to Commission Approval)
Wednesday, March 31, 2010**

**COMMISSIONERS PRESENT
IN CARSON CITY:**

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

**STAFF PRESENT IN
CARSON CITY:**

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

**COMMISSIONERS PRESENT
IN LAS VEGAS:**

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

III *HEARING OFFICER INTERVIEWS AND SELECTION (CLOSED SESSION MAY BE HELD TO CONSIDER CHARACTER, ALLEGED MISCONDUCT, OR PROFESSIONAL COMPETENCE OF APPLICANTS IN ACCORDANCE WITH NRS 241.030.)

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Beverly Ghan: Personnel Analyst, Department of Personnel, stated the position was announced on the State website on December 1, 2009 and was closed on December 31, 2009. The position was also advertised in newsletters and in mailings. When only 25 applicants responded to the opening, the position was re-opened through the month of February 2010 and an additional 17 responses were received. Being a Nevada licensed attorney was mandatory and each applicant was requested to give a 3 to 5 minute presentation. In the North, there are 9 recommended applicants and in the south, there are 8 recommended applicants.

Chairperson Fox: Read for the record the Hearing Officer's duties and responsibilities which consist of licensure as a Nevada attorney, recent experiences in administrative law, personnel disciplinary matters and with the State of Nevada system.

Shelley Blotter: Recommended that if the applicants in attendance did not want to wait for the Commission's decision that they would be contacted at a later date of the final approvals.

Chairperson Fox: Asked for additional comments from the Commissioners. She stated what the process overview was and thanked Commissioner Mitch Brust for volunteering to be a part of the resume review process and working with the State Department of Personnel. She reiterated the minimum qualifications.

A. RECOMMENDED TO THE COMMISSION FOR INTERVIEW (NORTH).

Applicant presentations proceeded as follows:

CHARLES P. COCKERILL

Summary of qualifications: Deputy Attorney General for one year, Chief Deputy District Attorney for Carson City for ten years, in private practice since 1992 exclusively practicing labor law on the side of management for Lincoln County in the south and the City of Reno in the north, as well as a number of school districts, fire districts, and a hospital (Carson Tahoe), advising them in regard to their personnel matters.

Considers himself very even handed and has been appointed over 100 times as an arbitrator in civil cases and has decided approximately 50 contested civil cases with decisions.

In regard to his management clients, he advises his clients (regarding dismissals) when they may not have enough cause to terminate; he advocates for his clients as well as advises them.

His recent experience consists of termination cases since 1992 with about 15 to 20 per year.

He wants this position because he sees it as broadening his experience, and it is why he has volunteered as a Hearing Officer for the Mandatory Arbitration Program for the State of Nevada District Courts. He does not have a civil practice.

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As a Hearing Officer, his cases usually take one day with a written decision within 7 days after a hearing. He indicated none of his decisions have ever been reversed.

He shared he was honored to be a candidate. He expressed his desire for scheduling that will allow him to perform his duties as a hearing officer for the mandatory arbitration program. He then asked if there were questions.

Commissioner Read: Asked about timely hearings and reports, which has been a big challenge and would he be able to handle hearings in a timely manner and return competent judgments within 90 days?

Mr. Cockerill answered absolutely. He indicated he would be able to meet those timelines.

Chairperson Fox: Asked about his knowledge in various areas of business that State of Nevada employees are in, as a sense of support you have provided to public sector jurisdictions and provided examples of Public Safety, Social Services or Administrative areas in terms of the public sector.

Mr. Cockerill answered he has done termination arbitration for the Firefighters and Police services for the City of Reno as well as non-public safety. He represents school districts throughout the state; school teachers, classified employees as well as hospitals and not only as an arbitrator but in an advisory capacity as it relates to the possible termination of a public sector employee of his clients.

Commissioner Brust: asked Mr. Cockerill to interpret NRS 284.390, if it is an up or down decision and if that is how he must decide or if he is so inclined to find some middle ground.

Mr. Cockerill answered that this is black and white; either you are reinstated with full back pay and benefits or you are not and this would be his inclination.

He shared it was a pleasure to sit before them and looked forward to working with them if selected.

Mr. Cockerill was thanked for coming and told he would be notified by the Department of Personnel in the event he had other commitments and could not stay through the end of the meeting.

PATRICIA D. CAFFERATA

Summary of qualifications:

She stated she has been a lawyer for 20 years. She has clerked for 2 district court judges (Judges Dave Gamble and Connie Steinheimer) and is familiar with the hearing process. She has worked for State and local governments and has been an

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Assemblywoman, State Treasurer, and Executive Director of the Nevada Commission on Ethics. She was a District Attorney in Lincoln, Lander and Esmeralda counties; therefore she has advised governments on personnel matters as well as having administered them as Executive branches. She has taken State Personnel courses on discipline and retired from the Ethics Commission last year.

Commissioner Brust: read NRS 284.390 and asked for her interpretation.

Ms. Cafferata affirmed that it is an up or down decision.

Commissioner Moore: asked if the applicant has direct experience as a hearing officer. Ms. Cafferata answered no.

Commissioner Moore: then asked for her scope of experience on advice on personnel matters and the Ms. Cafferata answered that would be when she was District Attorney for Lincoln, Lander and Esmeralda Counties. She indicated that the District Attorney is the chief legal advisor to all elected and appointed officials, therefore any personnel issues were presented to her in that capacity.

Ms. Cafferata thanked the Commissioners for the opportunity to be among the many great applicants.

WILLIAM KOCKENMEISTER

Summary of qualifications:

Mr. Kockenmeister shared he has been a Hearing Officer for 6 years, the first two as an alternate and 4 as a regular Hearing Officer. He takes the job very seriously and what he has learned is these cases are very personal and gave an example, sharing emotions play a part in these important decisions. He shared he is also a Tribal Judge for numerous tribes in Nevada and California. As a Hearing Officer, last year he was assigned 73 cases and takes pride in hearing these cases in a timely manner and within budget. He has had 31 appeals and was reversed once, which he feels indicate his decisions are thoughtful, detailed and apply the facts to the law.

Mr. Kockenmeister addressed the survey and stated criticisms in the survey will be taken as constructive and work toward positive change.

Chairperson Fox: referenced a specific comment by a union counsel and quoted "he yells at witnesses and calls them liars" and asked for his suggestions or thoughts regarding this remark.

Mr. Kockenmeister said he perceives that comment as a criticism, he should have been stronger and was familiar with that proceeding and it was a very contentious proceeding if he had it to do over again, would have asked that attorney to behave in a more professional manner. He takes responsibility for the case going on too long and not putting an end to it quicker.

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He shared that it is his general philosophy to give (that) employee every opportunity with his counsel to put on a case.

Commissioner Brust: asked about another specific comment “how should the other side prove their case”. Mr. Kockenmeister went on to describe his experiences. He perceived the comment as a miscommunication.

Chairperson Fox: perceived diligence and dedication of State employees and asked about his perspective in regard to the kinds of issues in these economic times, have they changed, are they more difficult to manage?

Mr. Kockenmeister indicated there are more terminations, that he has been assigned, and said, honestly, is this a way of cutting back by taking the employees that you least like and terminating them ‘for cause’ as opposed to ‘budget cuts’ (being the reason for dismissal) and shared he has seen a few cases where he felt this may have been the motive, and to expect more this year and this appears to be a trend.

Commissioner Brust: asked Mr. Kockenmeister to provide his interpretation of NRS 284.390. He was prepared having reviewed Supreme Court cases and provided the following example; the state had provided evidence that the suspension is valid, but under the principles of progressive discipline a 30 day suspension was beyond prescribed prohibition and penalties. He believes the Hearing Officer would have the authority to reduce the length of suspension to 5 days or 10 days or whatever is deemed appropriate. Commissioner Brust then asked if the recommendation was dismissal what was the Hearing Officer’s authority to suspend. Mr. Kockenmeister indicated that particular issue is presently on appeal and felt that he is completely authorized to make that type of decision, but is not as cut and dry as you (the Commissioners) may think.

Director Teresa Thienhaus: asked Mr. Kockenmeister to provide his philosophy on progressive discipline and how he views it. Mr. Kockenmeister stated the purpose of progressive discipline is to encourage and provide incentive for the employee to change or discontinue whatever behavior is at issue.

Mr. Kockenmeister shared he enjoys his work as a Hearing Officer and looks forward to the opportunity to continue his contract.

PAUL LAMBOLEY

Summary of qualifications:

Mr. Lamboley referenced the attachments including a cover letter and resume. He indicated he has sat on both sides of the table. He has advocated for employees and their organizations, has been a public sector employer and sat as a member of management team on personnel matters. He feels he has a substantial amount of familiarity with personnel and employment law. He has been a Hearing Officer

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and arbitrator, as a member of panels as well as individually, in both commercial and employment labor relation disputes. He has learned over time that employment is a continuing relationship; it requires cooperation in the employment setting. There is an anticipation of continued relationship; therefore one has to be very sensitive to that when you measure both sides of a dispute. Credibility of fact finding is paramount in these cases and it is difficult to evaluate these cases given the short amount of time to validate the credibility of any and all of the witnesses.

Commissioner Read: asked if there would be any reason you would not be able to provide decisions in a timely manner. Mr. Lamboley answered no. He shared he has been a Hearing Officer and arbitrator and has done so in a timely way. He does not believe he has ever had a case reversed.

Chairperson Fox: asked if his professional work experience referenced in his cover letter and resume was at the federal level. Mr. Lamboley indicated it was state and local levels, practicing in Reno and Las Vegas as a labor lawyer representing employees as well as many private sector organizations in which federal labor relations was the context in the governing law, although a long time ago, was more city and county rather than state employees as legal council to an employee association as well as individual employees with cases regarding statutory or bargaining right considerations. Mr. Lamboley stressed the importance of employment on a personal, professional and social level for individuals; it is a sensitive environment requiring humility on the part of those making decisions.

Commissioner Brust: read and asked for his interpretation of NRS 284.390. Mr. Lamboley indicated occasionally it is a little more complicated. The interesting part is the statutory and regulatory elements of state employment. The Hearing Officer has a responsibility to develop a record, make a determination and may, in some cases, depending on the record and what the facts demonstrate, follow the statute in its spirit, not necessarily literally. The Hearing Officer may have some flexibility to determine an appropriate measure of discipline that addresses the facts and circumstances of the individual case. He shared he felt the statute is written very broadly; therefore the Hearing Officer has an opportunity to make a decision that does impose discipline in a fashion different than, without necessarily taking the absolute, and saying if discipline has not been established then reinstatement has a necessary consequence of that hearing.

Commissioner Moore: commented that most of this applicant's experience has been as an advocate for whomever he is representing, and often times may become adversarial in nature. She continued, pointing out a comment made by the applicant regarding maintaining a satisfactory relationship between all parties concerned at the end of the hearing.

NANCYANN LEEDER

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Summary of qualifications:

Ms. Leeder had been practicing for 32 years, clerked for Judge Bowen in Reno, City of Reno council for the employer in disciplinary matters, as Criminal Deputy Adviser for the Police Department in traffic and zoning. In private practice she was counsel for employees in discrimination and disciplinary matters before the Equal Rights Commission and some federal agencies. She was an arbitrator for the Second Judicial Court. She was also employed by Nevada Attorney for Injured Workers as the appointing authority for the employer of 34 full-time employees and was responsible for hiring, progressive discipline, and terminations and none were overturned. She is aware of substantiation required to support decisions by the appointing authority. She has also been a Hearing Officer for a variety of State agencies. As well as a trial attorney, primarily in private practice. Ms. Leeder has been trained in many courses by the Nevada Department of Personnel, most recently core classes completed in 2008-2009 and finished as an appointing authority in June 2009 and is eager to serve the State.

Commissioner Read: asked if there was any reason she would not be able to provide timely decisions.

Ms. Leeder answered no because she is currently only working part-time for other attorneys doing research and writing.

Commissioner Brust: asked the applicant to interpret NRS 284.390.

Ms. Leeder indicated she is familiar with the statutes and stated that NRS 390 gives the appointing authority some leeway. She agrees that a Hearing Officer reviews matters de novo therefore can re-look at penalty. She feels it is the job of the Hearing Officer to review documents which initiated the action within the per view to discuss with both parties what the Hearing Officer believes those document show and any problems the Hearing Officer sees which would afford the counsel for both parties an opportunity to review their respective positions.

Commissioner Moore: asked for a clarification; when Ms Leeder was with Nevada Attorney for Injured Workers, did she say she had 34 FTE's ?

Ms. Leeder answered in the affirmative, 33 actual people and 2 part-time people (which equals one FTE).

MARTIN CROWLEY

Summary of qualifications:

Mr. Crowley referenced his letter of interest and specifically cited his experience as an arbitrator for the State of Nevada in the 2nd Judicial District as well as the 1st and 9th Judicial Districts. Mr. Crowley feels serving as an arbitrator would be very similar to being a Hearing Officer because of the bodies of law reviewed and the testimony of witnesses. This position requires a clear understanding of the legal issues as well as the factual issues to make a determination and has been doing so

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for more than 13 years. He shared he likes to see the law followed and perceives the position of Hearing Officer as one of a fact finder versus a litigator. Mr. Crowley feels this position requires an individual to have the experience, knowledge and expertise to sift through the facts and apply the relevant case law and authority. His experience over 23 years is significant in the area of employment law in a variety of cases and venues in a civil and criminal practice. On the whole he has experience as a litigator and most recently as an arbitrator.

Commissioner Fox: asked for specifics regarding his representation of employees, employee associations as well as his most recent employment arbitration decision in favor of his client in the Deputies Association.

Mr. Crowley answered that this involved a Churchill County Deputies Association case where (he represented) an employee who appealed his termination. An out of state arbitrator was selected in accordance with Churchill County codes and it was determined the employee did not violate established policies and procedures and was returned to his employment. He presently is assisting with contract negotiations for the Churchill County Deputies Association.

Commissioner Read: asked about receiving timely decisions.

Mr. Crowley answered absolutely, as an arbitrator he is required to issue decisions within 7 days of the completion of arbitration. Commissioner Read asked about limiting continuances and Mr. Crowley agreed.

Chairperson Fox: asked if he has represented the management position in grievances, hearings or arbitrations.

Mr. Crowley indicated he has a few employers, but the majority has been employees, though he has a number of employer clients. He indicated that he must do a good job in representing the employers because they do not get challenged in court and have not ended up in arbitration.

Commissioner Brust: asked the applicant to interpret NRS 284.390. In response to his question Mr. Crowley indicated that without just cause the employee is returned to his employment. He gave an example of a sheriff's deputy arbitration case.

Martin Crowley mentioned that he has a fondness for the rural area and has extensive background in these areas.

LANSFORD W. LEVITT

Summary of qualifications:

He stated that he began his career in 1979 at the National Judicial College for the first 5 years he was involved in the development of the administrative law

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curriculum. He was an administrator at the college. He stated he was heavily involved in the curriculum development, faculty recruitment and did some teaching. He went on to say that in 1992 he left the college and went into ADR mediation and arbitration; he helped the Supreme Court and the State Bar in developing the arbitration training for the arbitrators. He has been an arbitrator/mediator full-time since 1992 in Reno and Las Vegas. He stated that he has had several hundred arbitrations in Las Vegas and serve on the panel in Washoe County and in Carson City and a pro tem judge in the short jury trial program. He served as a settlement judge for the Supreme Court; he helped initiate that program about 13 years ago, with over 500 appointments. He also serves as a mediator for the US Postal Service; they are EEO type of complaints. He stated he is a contract mediator with the Department of Agriculture.

Commissioner Read: asked since Mr. Levitt is so busy will he be able to provide timely decisions and reports.

Mr. Levitt responded was unsure how many Hearing Officer cases are heard in a year. Shelley Blotter indicated that in the past the primary Hearing Officer would hear approximately 45 cases, but just last year the case load was up to almost 75 cases. Mr. Levitt indicated that he has always rendered decisions in a timely manner and would continue to do his best to do that.

Commissioner Brust: asked him to explain out of the mediations and arbitrations that he has done, how many of those would be in the employment arena?

Mr. Levitt stated that about 10% would be involved with employment issues.

Commissioner Brust: asked the applicant to interpret NRS 284.390. Mr. Levitt indicated that it is an up or down decision.

Commissioner Moore: stated that he seems to be a very busy individual and asked what generated interest in applying for this position?

Mr. Levitt answered that this is an area of the law that he has not had as much experience in as the others, and would like to experience it. He indicated that the personnel issues are very interesting to him.

K. SUE TRIMMER

Summary of qualifications:

She stated that she has been an attorney in Reno for the past 21 years. She has practiced in the field of employment law and contracts. She has represented both the employer and the employee. She is a court appointed arbitrator, she hears basically contract cases with occasionally a case involving employment. She indicated that she is fair minded and has a tendency to take employment cases seriously. She stated she is good at analyzing data and applying the facts that she gets to the law. She is not as familiar with public employment law.

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Commissioner Read: asked if she will be able to provide timely decisions and reports.

Ms. Trimmer indicated that she has never been late on a decision.

Commissioner Brust: asked the applicant to interpret NRS 284.390 subsection 6.

Ms. Trimmer replied that after all the evidence that is provided and you find the employee was not fired for just cause then the employee should be reinstated with all their back pay.

Commissioner Moore: asked her for more details on the employer and employee representation that she indicated on her application.

Ms. Trimmer answered that as an advocate she did litigation cases from the employee and the employer's perspective.

LOUIS LING

Summary of qualifications:

He stated he was in private practice for 4 years representing the State teachers' union statewide. He did reinstatement of state employment actions. He feels he found his calling after working for the State; he was a classified employee with the Attorney General's office for 9 years. He stated that he has always done administrative law; he represented 16 boards and commissions in this state. In those positions he helped make sure that the commission wrote good decisions/orders, there have been approximately 700 orders that he has written over the past 18 years. He has never had any order overturned. He was general counsel to the Pharmacy Board for 9 years. He was the Executive Director for the Nevada Board of Medical Examiners. He resigned from that position in October of last year, and decided he really wanted to do administrative law. He has been a public employee. He has sat with his clients and had to work them through the difficulty of having an employee that you need to progressively discipline and give advice to the public state employer client. He stated that he also had to sit with the employees who are being bullied by a manager and find a way to get through that. He has also been a public employer with 25 employees, in which time he has to progressively discipline employees, terminate and hire employees. He stated that by the time the Hearing Officer is involved in many cases it is very personal and he feels that it will only get worse with the pressure from the budget. He indicated that he has been involved on both sides of employment and understands the issues. In regards to Commissioner Brust's question of interpretation of NRS 284.390, he indicated that you would have to put the employee back into his position if there is no just cause. He went on to say that unfortunately most cases are not that clean, then you would have to use your authority as a Hearing Officer to guide them toward what needs to happen but ultimately you have to follow statute.

Commissioner Moore: asked if he had any direct experience as a Hearing Officer in the past?

Mr. Ling answered that he has advised Hearing Officers in the past and sat in the lay boards and made sure the records are clean, and the functions of counseling the boards are the same functions as the Hearing Officer. He indicated that he has not been a Hearing Officer.

B. NOT RECOMMENDED (NORTH)

Chairperson Fox: Indicated that there are 3 individuals in the North who were not recommended but would like the opportunity to speak to the Commission.

MARK T LIAPIS

Summary of qualifications:

He indicated that he is a very experienced attorney, for 4 years he has advised a non-attorney Commissioner at the Public Service Commission on complex issues. He stated he decided procedural motions, drafted final opinions and orders and some of them are very involved. Out of all the orders and opinions that he drafted none were appealed. He indicated that he has no experience in administrative law but he learns fast and well. He is currently a civil litigator in private practice. He recently has been a speaker at a legal seminar for legal research and writing and uninsured motorist law. Recently he was appointed as a mediator from the Nevada Supreme Court in the home foreclosure mediation program.

Commissioner Brust asked if he had any experience in personnel disciplinary matters and to please comment on NRS 284.390.

Mr. Liapis indicated that no he had not but stated he has other high qualifications. He feels that the Hearing Officer finds that the employee is correct then he must be reinstated.

STEVEN F. STUCKER

Summary of qualifications:

He has been a Deputy City Attorney and Chief City Attorney for North Las Vegas at that time he advised the personnel department. He was also the legal advisor for the planning commission, civilian board. On the occasion the absence of the city attorney he would advise the city council on all of its actions. He drafted portions of the city personnel ordinances or redrafted them as appropriate. He also did contract negotiations for the Fire Department. He was employed by the Attorney General's Office in both the Real Estate Division and the Department of Motor Vehicles. He proceeded in disciplinary actions of behalf of the Real Estate Division, relying on the evidence from the investigators. He represented DMV at numerous hearings as well as several appeals to the District Court and Supreme

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Court. He indicated he has 35 years of experience in government and civil law combined. He feels that respect is very important in court.

Chairperson Fox asked if he was currently licensed in the State of Nevada to practice law since he had closed his private practice. He replied that he was licensed.

Commissioner Brust asked the applicant to interpret NRS 284.390 subsection 6.

Steven Stucker replied that the NRS states that the employee must be reinstated.

Chairperson Fox asked for motions on the Hearing Officers that have come forward.

Commissioner Read made a motion for Patricia Cafferata to be accepted and was seconded by Commissioner Brust.

Director Teresa Thienhaus asked a question to the counsel Cameron Vandenberg if there can be further discussion on the candidates before deliberation. She indicated that Commissioner Moore might have a comment.

Cameron Vandenberg indicated yes.

Commissioner Moore made a comment that Patricia Cafferata has limited experience and encourages her to continue to grow and learn.

MOTION: Moved to approve Patricia Cafferata as a Hearing Officer
BY: Commissioner David Read
SECOND: Commissioner Mitch Brust
VOTE: The vote was unanimous in favor of the motion

Director Teresa Thienhaus: Indicated she would like to see a pool of 8 or 9 and suggested the hearing clerk can pull 5 from that list each time. She also asked when public comments were going to be allowed.

Chairperson Fox: indicated that she will take the agenda out of order and allow for public comment at this time, first in the North and then in the South for only the applicants in the North.

ROBERT BELL

Summary of qualifications:

Attorney from Reno, Nevada and apologized for being late. He is an administrative Hearing Officer for the City of Reno for 15 years. He stated he is a pro tem municipal court judge for the City of Reno and Sparks for approximately 20 years. He is an arbitrator for the Better Business Bureau and has conducted hundreds of administrative hearings for the city in all categories.

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Being that he is in private practice he can set his own schedule and he does a lot of work in the administrative field. He is able to promote settlement to save money and time for litigants. He graduated from the McGeorge School of Law and UNR.

Chairperson Fox: asked for any public comments relating to the Northern candidates.

Richard James: representing Nevada Department of Public Safety Association, read a list of names that he opposed which were Patricia Cafferata, Charles Cockerill, Martin Crowley, Lance Maiss, Richard Stuab, Bill Hoffman and Daniel Hussey. He stated that he feels these individuals would be biased against public employees.

MOTION: Moved to approve Charles Cockerill as a Hearing Officer

BY: Commissioner David Read

SECOND: Commissioner Daryl Ann Moore

VOTE: The vote was unanimous in favor of the motion

Chairperson Fox: No motion for Martin Crowley

MOTION: Move to approve Bill Kockenmeister as a Hearing Officer

BY: Commissioner David Read

SECOND: Commissioner Daryl Ann Moore

VOTE: The vote was unanimous in favor of the motion

Chairperson Fox: No motion for Paul Lamboley.

Chairperson Fox: No motion for Nancy Ann Leeder.

MOTION: Move to approve Lansford W. Levitt as a Hearing Officer

BY: Commissioner David Read

SECOND: Commissioner Daryl Ann Moore

VOTE: The vote was unanimous in favor of the motion

MOTION: Move to approve Louis Ling as a Hearing Officer

BY: Commissioner David Read

SECOND: Commissioner Mitch Brust

VOTE: The vote was three to approve and one opposed (Commissioner Daryl Ann Moore) in favor of the Motion

Chairperson Fox: No motion for K. Sue Trimmer

Chairperson Fox summarized the approved Hearing Officers in the North. Cafferatta, Cockerill, Kockenmeister, Levitt and Ling.

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Commissioner Read asked to add Martin Crowley to the list.

MOTION: Move to approve Martin Crowley as a Hearing Officer
BY: Commissioner David Read
SECOND: Commissioner Mitch Brust
VOTE: The vote was unanimous in favor of the motion

Commissioner Read asked to add one more to the list.

MOTION: Move to approve Paul Lambolely as a Hearing Officer
BY: Commissioner David Read
SECOND: None
VOTE: None

Chairperson Fox: Due to lack of a second of the motion the motion does not pass.

Commissioner Moore asked to consider K. Sue Trimmer

MOTION: Move to approve K. Sue Trimmer as a Hearing Officer
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner Mitch Brust
VOTE: The vote was 2 approve and 2 opposed and the motion did not pass.

Chairperson Fox: Hearing no motion for those not recommended she asked for comments.

Commissioner Read: Shared that this is the best group of Hearing Officer applicants that the department and this Commission has ever received.

Chairperson Fox: Concurred with David Read.

Shelley Blotter: Stated, recommended and selected applicants will be contacted by a staff member with information on training and indicated the BOE will have final approval on all contracts which will (if approved) go into effect on July 1, 2010.

MOTION: Move to recess for lunch at 11:49 A.M.
BY: Commissioner David Read
SECOND: Commissioner Daryl Ann Moore
VOTE: The vote was unanimous in favor of the motion

The meeting reconvened at 1:06 P.M. The Commission restated their names for the record.

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Director Thienhaus indicated there was additional information sent in at the last minute by Janet Trost and wanted to see if everyone was in receipt of this additional information. They all indicated that they were.

Chairperson Fox: summarized those applicants that were chosen from the North: Caffarata, Cockerill, Kockenmeister, Levitt, Ling, Crowley.

Chairperson Fox: indicated that the Hearing Officers selected may not be confined by jurisdiction and will have the flexibility to travel either North or South.

B. RECOMMENDED TO THE COMMISSION FOR INTERVIEW (SOUTH)

ANN WINNER

Summary of qualifications:

She stated that she is currently serving as the alternate Hearing Officer for the State of Nevada for the past 4 years. She has heard all types of matters involving personnel issues. She said that she has had some of her decisions appealed but does not believe that they have been over turned. She indicated that before becoming a Hearing Officer for the Department of Personnel she was a Hearing Officer for the Taxicab Authority. She participates in a very limited capacity in a private law firm, in which her husband is one of the partners. She prefers being a Hearing Officer as opposed to litigation. She spent 5 years in the Attorney General Office representing a variety of State agencies, including a numerous amount of personnel matters. She was board counsel to several different boards and commissions. She indicated that she enjoys being a Hearing Officer for the Department of Personnel and would like to continue doing it. She appreciated the survey report that the Department put together.

Commissioner Moore: asked what her response time is in getting the reports done.

Ann Winner responded that she has always been within the 30 days for a decision.

Commissioner Brust asked the applicant to interpret NRS 284.390 subsection 6.

Ann Winner says that in a termination case, the employee would be reinstated until the Agency made a different determination based on her findings.

Director Teresa Thienhaus: asked how she views progressive discipline.

Ann Winner responded that it is one of the most important processes that an agency can take is to utilize progressive discipline. She went on to say that only in

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a serious violation would bypassing the steps of progressive discipline be appropriate.

MARK ANDERSON- Withdrew

NORMAN N. HIRATA

Summary of qualifications:

He has been a personal injury and civil rights defense trial lawyer for 31 years. He also did insurance defense work for a period of time in Las Vegas for 3 years. He has been licensed with the State of Nevada since 2005. He indicated that he has a broad base of qualifications and knowledge. He started his career in private practice in Los Angeles and Santa Monica City Attorney's Office for 21 years. He only did civil, civil defense, civil rights and personal injury defense. He indicated that during this time he learned to really listen to people and analyze these situations. In addition he was a judicial arbitrator for Los Angeles Supreme Court for 4 years. In 2005 he continued this in Nevada in the 8th District in Las Vegas. He enjoys being an arbitrator. He does the notices for the hearings, starting with the early arbitration conference, discovery order, sets the parameters of what will be done within certain time periods, handles discovery disputes among the parties and the attorneys, conducts the arbitration, and makes the decision. In 8 years he has only had 2 cases appealed but has never gone to trial. He stated he is semi-retired and would love the opportunity to work as a Hearing Officer.

Commissioner Read: asked if he would be able to provide timely decisions.

Norman Hirata stated that he always made his arbitration deadlines.

Commissioner Read: asked if he has any experience representing the employer?

Norman Hirata stated yes he has.

Commissioner Brust asked the applicant to interpret NRS 284.390 subsection 6.

Norman Hirata responded that the word "must" is very important in this section. It appears that the Hearing Officer must do this by law and reinstate the employee.

Commissioner Moore: asked him to give more detail on the reviewing of administrative hearings, involving discipline, suspensions and terminations while he was with the City of Santa Monica.

Norman Hirata replied with an example of a police officer that was being sued for excessive force and violation of constitutional rights.

C.W. "BILL" HOFFMAN JR.

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Summary of qualifications:

He has been practicing law for over 25 years in the public sector. In addition to having practiced in front of Nevada's State and federal courts, he had also practiced in front of Nevada's Employee Management Relations Board, the Ethics Commission and a member of Nevada's Judicial Discipline Commission since 2004. His practice requires that he be familiar with all forms of the public law including; personnel and labor law, public finance, public purchasing, public construction, open records and meetings, unemployment hearings and so forth. He has extensive experience in the business of personnel discipline, represented Nevada's largest public employer for about 15 years. This includes interpreting State laws and collective bargaining agreements. Regardless of performance problems or misconduct the personnel rules are generally the same as the Education personnel system which he is currently very familiar with.

Chairperson Fox: asked since he is general counsel for the Clark County school district and with his schedule does he see any conflicts with doing both Hearing Officer positions?

C.W. Bill Hoffman, Jr. indicated that he also teaches at the local university as well, duties at the Judicial Commission and is able to make all the schedule requirements. He also mentioned that he has furlough days coming and is free to do hearings on those days as well.

Chairperson Fox: she asked that he stated in his resume that he provides advice on alcohol and drug testing. She asked him to give his perspective of pre-employment drug testing.

C.W. Bill Hoffman, Jr. this is not something that the Hearing Officer will be involved in since this is done pre-employment. He would encourage aggressive screening to weed out those applicants who have a drug and alcohol problem that would interfere with their ability to do their job. Once the employee is part of the work force he indicated that statute does set forth some of the standards for the employer can use in deciding to administer a drug or alcohol test and its clear the Supreme Court has talked about the permissibility to have drug tests for those employees in safety sensitive positions. Those individuals who carry fire arms. Drug and alcohol testing for other employees would be allowed under certain circumstances.

Commissioner Brust: asked the applicant to interpret NRS 284.390 subsection 6.

C.W. Bill Hoffman, Jr. responded that he realizes the importance of the word must but he wanted to know if the Hearing Officer has the authority to award a lesser discipline.

DANIEL S. HUSSEY

Summary of qualifications:

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He stated he is the current Hearing Officer in the South for the last 6 to 8 years, previously the alternate for 4 to 6 years. After getting his degree from UCLA law school he became a law clerk for a district court judge in Clark County. He went into private practice after that until he was recruited by the city attorney's office in Las Vegas, as a trial attorney for 9 years. One of his duties during that time was to spend one week in a patrol car with Metro Police, including the detective's cars. He got a complete understanding for law enforcement and their needs as well as management's needs. When an opportunity opened up at the school district to be their attorney, he was district counsel for them for 18 years. He was involved with teachers, support staff, administrators, law enforcement officers and the police attorney for the school district police. He was on the Personnel Commission for 10 years and the chairman for a few years, when the commission as a whole heard these cases. It was after his school district career that he became a Hearing Officer for the Department of Personnel. He stated his decisions are typically out within 10 days.

Commissioner Brust: asked Mr. Hussey to explain one of the comments made on the survey feedback "Mr. Hussey tried to mediate the case, we disagreed with these efforts because we felt it was his responsibility to review the case and render a decision, not negotiate out a settlement".

Daniel Hussey responded that the justice system is over loaded with cases; they have gone to mediation instead of trial. 81% of one court judge's cases were settled in mediation instead of trial. He said he offers to the parties mediation before the hearing begins, that they would have the opportunity to negotiate between them and see if they can get what they really need. He only offers mediation if the parties agree to it. It is very costly to go to a hearing or even to trial. Mediation is a less expensive solution. If they do not decide to mediate then it is an up or down decision during the hearing.

Director Teresa Thienhaus: asked what his feeling or take on progressive discipline is?

Daniel Hussey said the purpose of progressive discipline is to moderate or to change behavior to get the employee to comply with what the employer wants them to do. This is done by lesser discipline or progressive discipline.

Chairperson Fox: in looking at the role of a Hearing Officer it is to conduct hearings and render decisions regarding involuntary transfers, dismissals demotions and suspensions. She didn't see a formal mediation role of activities that a Hearing Officer is charged with. She asked where and how did he see the mediation process occurring in terms of serving as a Hearing Officer.

Daniel Hussey stated that it is offered to those parties who agree to it. If one party does not agree then they go to hearing. He indicated he brings it up as an option because the departments are not utilizing this process.

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Director Teresa Thienhaus: stated there isn't a rule or regulation that specifies that parties should mediate or settle prior to a hearing.

Cameron Vandenberg: stated that most people don't consider mediation or settle until they walk into the court room and change their mind. A settlement is a better way to go because theoretically both parties are happy and if the employment relationship is going to continue then this is a good thing to happen, rather than having an order forced upon one party or the other that they don't necessarily like. There is nothing in the law that would discourage the Hearing Officer to offer this if the parties are in agreement.

Commissioner Moore: stated that if you can mediate and resolve the issue then you will have a much better success in your relationship.

RICHARD REED

Summary of qualifications:

He stated he is a practicing attorney in Las Vegas. He was a probate judge in Twin Falls, Idaho in 1967 for 3 years and finds that experience invaluable. He went on to say he has been an arbitrator in the State of Nevada for over 12 years. He answered Commissioner Brust's question regarding the NAC and that provision is contextual in nature and not a specific standard and feels it is more general. A determination of just cause would need to be met, and it reads that they leave that determination to the Hearing Officer. He stressed a concern on the concept of progressive discipline and didn't see where there was any leeway in any alternatives in reinstatement.

Commissioner Read: asked if there was any reason why he could not provide timely decisions.

Richard Reed: he understands his concern and stated there would be no problem in proving timely reports and hearings.

Commissioner Brust: asked him that after hearing the evidence of the case do you think you have the authority to change the employment decision of the employer?

Richard Reed: He indicated that the way he reads NRS 284.390 it offers the Hearing Officer the authority to reinstate the employee. He went on to state that he does not feel that the Hearing Officer has the authority to grant an alternative for reinstatement.

Commissioner Moore: asked him regarding the examples he gave for the arbitration involved with the home owners associations, have you had experience as a Hearing Officer or arbitrator where you have had to make a final decision, part of the role of a good Hearing Officer is to make sure that the relationship in

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the employment relationship, is not adversely affected even though someone is going to ultimately win, and someone lose. In her mind, she states, that it is a little bit different, that it needs to control it a little bit better so you don't end up having a lot of people just angry because they have to go back to work for that person.

Richard Reed stated that seems to be the obvious outcome.

JANET TROST

Summary of qualifications:

She indicated she is the newest alternate Hearing Officer for Las Vegas for 2 years. In 1990 she moved to Las Vegas as a practicing attorney. She has been an arbitrator since 1992. She has sat on the Employee Management Relations Board for 8 years, 2 terms as chairman, vice-chairman and a member. She indicated that she is not conflicted to hear any cases from any agency. Her experience as an alternate Hearing Officer, only heard a few cases in which 5 went to decision, 4 decisions have been issued and one just about done. She stated her calendar is flexible, if any of the hearings took time to be heard it wasn't because of her calendar. She has been a mediator for the Nevada Supreme Court for 8 years, and has done a couple hundred cases as a mediator. She indicated that she doesn't feel it is the responsibility of the Hearing Officer to mediate. She went on to state that she doesn't feel it is in the Hearing Officers purview to give a lesser discipline when there is not just cause. She feels that good progressive discipline helps to modify behavior that's the optimal result you want from it. She went on to discuss her survey results and apologized for any late decisions or reports that she may have had, and stated that it will not happen again. She provided a poll survey results from the Supreme Court. She discussed some of the comments made about her on the Department of Personnel survey that was done. She explained that she asked a lot of questions during her hearings to better understand the inner workings and language of each different agency in order to understand the complexity of the discipline. However, the survey did indicate that she was fair and impartial.

JEFFREY VAN NIEL

Summary of qualifications:

He indicated that he brings a broad based administrative law experience with him, being that he has worked in 4 different states in the last 22 years. He said that his wife is a law professor at UNLV law school and he would need to dismiss himself from any hearing pertaining to this agency. He has no other work conflicts and has only the Yucca mountain repository case that he is working on at the moment. In 1987 he started his career in Ohio, acted as a bailiff and probation officer for a trial court at that time, before that he was a state trooper in Ohio and limited experience in court. He followed his wife's career to Nebraska, became licensed there and continued to practice law. Two years later he moved to Houston, Texas to practice law for Harris County Adult Probation Department. He initiated policies and procedures, disciplinary practices, and worked with EEOC to rewrite

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the employee handbook, instituted an in-depth policy for progressive discipline. He indicated that training your employees can be very valuable, but if you say you are training them you better be training them. If it is in the policy to do so and it is not followed it creates a liability for the department. In his experience as a Master Commissioner he stated the similarities between this position and the Hearing Officer duties. He commented on NRS 284.390 would be based on one disclaimer up front and that would be, absent some binding court decision on what he is suppose to find, it leaves him using statutory interpretation methodology to look for definitions that have common meaning and the word must stands out and it is not discretionary. He does not see that the Hearing Officer could recommend a lesser disciplinary action.

Commissioner Read: asked if he could provide timely decision and prompt hearings.

Jeffrey Van Niel indicated he could do that.

Commissioner Moore: asked why he wanted to apply for this position.

Jeffrey Van Niel stated that this area of law has become a passion of his.

Director Teresa Thienhaus: indicated there is no one in the south that came forward who was on the not recommended list.

Chairperson Fox: asked if there were any public comments for the southern applicants. No one came forward in the north or the south for public comments.

Chairperson Fox: asked for a motion on all southern applicants.

MOTION: Move to approve Ann Winner as a Hearing Officer
BY: Commissioner David Read
SECOND: Commissioner Daryl Ann Moore
VOTE: The vote was unanimous in favor of the motion

MOTION: Move to approve Norman N. Hirata
BY: Commissioner Mitch Brust
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion

MOTION: Move to approve C. W. Bill Hoffman, Jr. as a Hearing Officer
BY: Commissioner Daryl Ann Moore
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion

MOTION: Move to approve Daniel Hussey as a Hearing Officer

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BY: Commissioner Mitch Brust
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion

MOTION: Move to approve Richard Reed as a Hearing Officer
BY: Commissioner Mitch Brust
SECOND: Commissioner David Read
VOTE: The vote was unanimous in favor of the motion

Katherine Fox: Indicated there was no motion for Janet Trost and therefore does not pass.

MOTION: Move to approve Jeffrey Van Niel as a Hearing Officer
BY: Commissioner David Read
SECOND: Commissioner Daryl Ann Moore
VOTE: The vote was unanimous in favor of the motion

Shelley Blotter: Stated, recommended and selected applicants will be contacted by a staff member with information on training and indicated the BOE will have final approval on all contracts which will (if approved) go into effect on July 1, 2010.

Chairperson Fox: Thanked all of the candidates

IV. 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 one came forward in the north or the south for public comments.

V. *ADJOURNMENT

MOTION: Move to adjourn at 3:14 P.M.
BY: Commissioner David Read
SECOND: Commissioner Mitch Brust
VOTE: The vote was unanimous in favor of the motion