

**STATE OF NEVADA  
PERSONNEL COMMISSION**

Carson City at the Legislative Counsel Bureau, 401 S. Carson, Room 3138 and in Las Vegas at the  
Grant Sawyer Building, Room 4401, 555 East Washington Avenue via Video Conference

-----  
**MEETING MINUTES (Subject to Commission Approval)  
Friday, January 10, 2014**

**COMMISSIONERS PRESENT  
IN CARSON CITY:**

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

**STAFF PRESENT IN  
CARSON CITY:**

Ms. Lee-Ann Easton, Administrator, DHRM  
Mr. Peter Long, Deputy Administrator, DHRM  
Ms. Shelley Blotter, Deputy Administrator, DHRM

**COMMISSIONERS PRESENT  
IN LAS VEGAS:**

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

**STAFF PRESENT IN  
LAS VEGAS:**

Sr. Deputy Attorney General, Shane Chesney

**I. OPEN MEETING**

**Chairperson Katherine Fox:** Opened the meeting at 1:30 p.m. She wished everyone a Happy New Year and welcomed everyone to the first meeting of 2014. It was noted that the Sr. Deputy Attorney General, Shane Chesney was not present in Las Vegas but Chairperson Fox indicated if there were any items or questions that would require his assistance they would deal with them at that time or postpone the item(s) to a future meeting.

**II. ADOPTION OF AGENDA**

**Action Item**

**MOTION:** Move to approve the adoption of the Agenda of the January 10, 2014 meeting.  
**BY:** Commissioner Read  
**SECOND:** Commissioner Sanchez  
**VOTE:** The vote was unanimous in favor of the motion

**III. ADOPTION OF THE MINUTES OF PREVIOUS MEETING**

**Action Item**

**MOTION:** Move to approve the Minutes of the meeting dated October 10, 2013.  
**BY:** Commissioner Read  
**SECOND:** Commissioner Mauger  
**VOTE:** The vote was unanimous in favor of the motion

**IV. PUBLIC COMMENT NOTICE:** Read into record by **Chairperson Fox:**

No vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020) Comments will be limited to three minutes per person and persons making comment will be asked to begin by stating their name for the record and to spell their last name. The Commission Chair may elect to allow additional public comment on a specific agenda item when the item is being considered.

**Chairperson Fox:** Asked if there was any public comment. She noted there was none in the north or the south.

**V. DISCUSSION AND POSSIBLE SELECTION OF HEARING OFFICERS**

**Action Item**

**Chairperson Fox:** Noted that the items would be voted on separately.

- A. Continuation and/or Expansion of Interlocal Agreement with the Hearing and Appeals Division of the Department of Administration to Hear Employee Appeals

**Shelley Blotter**, Deputy Administrator, DHRM: Stated that the first item the DHRM (Division of Human Resource Management) was recommending was that the Personnel Commission select the Hearings and Appeals Division as the primary source for Hearing Officers for employee appeals. She noted that over the preceding months the DHRM had run a pilot and they had had some experience already and the results had been shared with the Personnel Commission in a survey that was included in the packet. She stated that they believed they would realize a financial savings by using the Hearings and Appeals Division as opposed to contract Hearing Officers. She noted that it was the recommendation of the DHRM that they be adopted as the primary.

**Chairperson Fox:** Asked if any Commissioners had questions.

**Commissioner Gary Mauger:** Stated he had some concerns. He noted that they now had Hearing Officers under contract that were not employed by the State. He said what was being proposed was that Hearing Officers currently employed by the State be used. He explained that his concern was that the Hearing Officers employed by the State might be tainted somewhat because they did work for the State relative to a neutral third party. He noted in the survey results there were 25 cases with 2 reversed in favor of the grievant. He said other than the financial savings, figures which were 70 versus 100, he said he would like to hear some discussion as to the reasoning to go to Hearing Officers employed by the State. He said the percentages of cases heard and decisions made would be biased in his opinion. **Lee-Ann Easton**, Division Administrator, DHRM: Explained what the DHRM believed would be gained from this change would be increased consistency within the State. She noted that currently the Hearings and Appeals Division had Appeals Officers who were all licensed attorneys in Nevada and were handling all the workers' compensation cases for employees. She added that they had never experienced a situation where they felt there was any bias. She said over the last ten years the Hearings and Appeals Division had handled predisciplinary hearings for the Department of Administration and they were always consistent with decisions. She stated that they would gain that, throughout the State agencies for both the benefit of the employees and the State agencies. She said there were now 12 different Hearing Officers conducting hearings who might not be quite as familiar with State rules and regulations and they were not getting the same level of consistency. **Commissioner Mauger:** Responded that they were then looking at it more for consistency or monetary as well. **Lee-Ann Easton:** Responded that they believed that the Hearings

and Appeals Division Officers were more cognizant of the State rules and regulations and therefore they would gain consistency throughout the State on employee decisions but this would also result in savings for the State. **Commissioner Mauger:** Explained his concern and that was of 25 cases there were only 2 decisions in the negative. He said he was interested to see what the survey would reflect the next time they had selections.

**Commissioner David Sanchez:** Advised Chairperson Fox that Sr. Deputy Attorney General Shane Chesney had arrived at the meeting. He also noted that there was public comment from the south on the issue.

**Chairperson Fox:** Thanked Commissioner Sanchez and stated that they would hear comments from Commissioner David Read first and then public comment.

**Commissioner David Read:** Stated that he was an enthusiastic proponent of using in-house Hearing Officers and stated that he had been involved for some time in the selection of individual attorneys which he said was challenging. He noted that he felt that each attorney was an individual and would act on their own interpretation and for that reason he did not see the fact that they were employees of another division in the State as being a problem. He said he understood that they still had to have outside counsel in the event the appeal concerned someone in the Personnel Division. He stated he was in favor of the change. **Chairperson Fox:** Asked about the situation where there might be an employee in State service who felt strongly about not having a State of Nevada Hearing Officer to hear their case. She asked if there would be consideration given to have a Hearing Officer not employed by the State. **Lee-Ann Easton:** Responded that the answer was yes. They had planned to continue to contract with 2 outside attorneys, 1 for the north and 1 for the south for any conflict of interest so there would always be that option. **Commissioner Read:** Made the additional point that the attorneys for the representatives had the right to challenge individual Hearing Officers also, whether employed by the State or otherwise. **Shelley Blotter:** Stated that the cases could also be appealed for judicial review.

**Chairperson Fox:** Asked for the public comment from the south.

**Ron Cuzze, President, Nevada State Law Enforcement Officers' Association:** Stated that he thought there were two types of consistency concerning the protocol/operation of the Hearing and the other, concerning the rules and interactions. He stated he agreed with Commissioner Mauger and thought that the employees were not receiving a fair hearing and said that the State did have an influence on the Hearing Officers. He gave an example of a hearing in the north in which they felt that the Hearing Officer was prejudicial in favor of the State, admitting the evidence of the attorney general but not the evidence of the association. He said the non-state Hearing Officers could be trained to do the job at the same level as State Hearing Officers. He referred to the issue of judicial review and said that members of his association could do that but he felt that the majority of other State employees could not afford to do that. He said that judicial review could be avoided if it was a fair hearing from the beginning.

**Bryan Nix, Senior Appeals Officer, Hearings Division, Department of Administration:** Stated that he had served in the position for a period of 25 years and was familiar with every Appeals Officer appointed during that time. He said that he did not think the Personnel Commission needed to be concerned about bias concerning the employees of the department or State employees. He said all the Appeals Officers served two-year terms and were appointed by the Governor. He said their re-appointment was at the discretion of the Governor based on performance. He said in his opinion the

record of the Appeals Officers was excellent. He said they had 3 in Carson City and 5 full-time in Las Vegas. He said they handled approximately 6,000 appeals annually with the majority of them being workers' compensation cases. He noted that it also included a wide variety of legal issues within that area. He said they also heard cases from a variety of State agencies that they had Interlocal Agreements with, as well as hearing matters by statute for appeals from the State and others. He noted that the attorneys who served considered the cases on legal issues decided on facts and the law as it applied on the matters, as opposed to viewing them as cases concerning employees of the State. He said he thought that they had had about 17 cases assigned since they had begun the process. He said approximately 4 had been heard and the balance had been resolved or were pending. He said for those 17 cases they had billed approximately \$5,000, most of that sum being clerical time. He said the attorneys' fees were reasonable as they were under an agreement and were not excessive. He added that it would result in cost savings for the State as they had offices equipped with digital court recording equipment so there was no cost associated with conducting a Hearing and they had trained staff. He said they would institutionalize the process and would do an excellent job.

**Commissioner Sanchez:** Stated he supported Commissioner Read's comments in advocating for the attorneys with the State. He said he did not object to contracting with outside attorneys. He said he agreed with Mr. Cuzze's point that they could receive additional training. He said his experience with the public sector was that outside Hearing Officers were not familiar with public sector policies and procedures. He said that it took more time for them to come on board. He said in-house attorneys would have more expertise. He said he agreed with the recommendation but also had no problem with contracting outside attorneys.

**Chairperson Fox:** Thanked Commissioner Sanchez. She indicated that there was additional public comment from the north.

**Kareen Masters,** Deputy Director, (DHHS): Stated that she was seeking some clarification. She said based on the workshop she asked if the intention was that there would no longer be the striking provision. She asked if they would not be striking Hearing Officers within the Department of Administration. She asked if that was that correct. **Shelley Blotter:** Responded that was correct. They would designate the Hearings and Appeals Division to receive all of the cases. She said if there was a need to have one recuse themselves then they could go to one of the Hearing Officers who were independently contracted.

**Kimberley King,** Human Resources Manager, NDOT (Nevada Department of Transportation): Stated that they had been using the services of outside Hearing Officers and they had had good results. She said that they had not had the chance to use internal Hearing Officers. She said that they did like being able to strike for Hearing Officers and this had worked well for their department.

**Commissioner Mauger:** Asked about the process of selecting the Hearing Officers, was it rotating or how did Hearing Officers get assigned to cases. **Shelley Blotter:** Responded that currently they were using a strike method and it was outlined in the Hearing Officer Rules and Procedures. She said the parties would receive a list of 5 Hearing Officers and the Hearings and Appeals Division would be listed as one. She said the parties would then have the opportunity to strike 2 and then from the remaining list they would, within the division, assign a Hearing Officer. She added typically they would assign it to the Hearing Officer carrying the least amount of cases. She stated that within the last several months they had assigned them to the Hearings and Appeals Division and then to their Hearing Officers with the least amount of cases so that they could get some experience with them. **Commissioner Mauger:** Asked if they would continue the process of striking within the

group of Hearing Officers. He asked if he was correct in understanding that they would offer 5 or 6 and each side would have the right to strike. **Shelley Blotter:** Responded no. She said the proposal was that they would remove the strike method if their proposal to designate the Hearings and Appeals Division as a primary was approved. She added that that would allow the Hearings and Appeals Division to assign the staff as they deemed appropriate. **Commissioner Sanchez:** Stated that the item from the agenda under discussion did not include that information. **Shelley Blotter:** Responded that they had a Regulation Workshop in early January. She said it was not before them at the current time. She said it was in anticipation of the decision of the Personnel Commission, if they would choose to continue with the Hearing Officers in their current selection of 12 Hearing Officers, all being independent contractors, then they would not repeal that regulation. She clarified that for the current meeting it was just a matter of deciding which method the Personnel Commission wanted to proceed with, either using the Hearings and Appeals Division as the primary and two alternates as independent contractors or going with using all contracted Hearing Officers. She said depending on the outcome of those decisions then the DHRM would know how to move forward. **Commissioner Sanchez:** Said if the Personnel Commission decided to approve then they would continue to strike until further regulations were brought before the Commission. He asked if that was correct. **Shelley Blotter:** Responded that the change would not occur until the existing contracts had expired which would be June 30, 2014. She said that they would be starting the process as of July 1, 2014 and at that point they would no longer use the strike method if Hearings and Appeals was selected as the primary.

**Bryan Nix, Senior Appeals Officer, Hearings Division, Department of Administration:** Asked if he would be allowed to interject on the discussion. He noted that he had had several conversations regarding the appointment process. He said if the Hearings and Appeals Division was selected as the main source they would not have a need to strike parties if there were a variety of attorneys with different interests. He described their current system. He noted, as Shelley Blotter had stated, it would not come up for several months but the division could work with the Personnel Commission on acceptable rules if they agreed to select the option. **Commissioner Sanchez:** Reiterated that he wished the item on the agenda had been clearer. **Commissioner Read:** Stated he agreed with Commissioner Sanchez. He said he was not aware of any difference in the issue of striking so that was a surprise. He said that he understood they would continue the same system until June and between January and June they would receive additional information. He said he thought the issue of striking was important for all parties concerned if they had concerns about individual attorneys. He said he would also be interested in knowing the length of time for decisions within the Hearings and Appeals Division as that was a concern and he thought if it was in-house that it would reduce lengthy delays. **Bryan Nix:** Responded that all decisions were rendered within 30 days of the date of the Hearing. **Commissioner Read:** Responded that that was amazing. **Bryan Nix:** Responded that this was something that they were always monitoring and they were always giving reports regarding their cases. **Chairperson Fox:** Said that she had noted his mention of a modified strike and asked what that would look like. **Bryan Nix:** Responded that he had heard there was a concern about the ability to avoid an Appeals or Hearing Officer who might appear biased for one side or the other. He appreciated that. He said that if the Personnel Commission was comfortable with a system where even within the agency the parties would have the ability to select, then he would have no problem with that. He added that he would like them to keep in mind the primary concern would be due process and that would involve all parties having a fair Hearing. He said he believed that they could come up with a system satisfactory to everyone. **Commissioner Mauger:** Stated based on what he had heard he would be inclined to go along with the recommendation. He asked that during the first 12 months when it would be initially put into place if they could get a tracking survey to get an idea of cases heard. He asked if that was possible. **Lee-Ann Easton:** Confirmed that it was and they

could provide the Commissioners with the same statistics report and this could be done continually or over 12 months for them to evaluate.

MOTION: Move to approve to continue with the Interlocal Agreement with the use of the Hearings and Appeals Division of the Department of Administration to hear employee appeals as well as continuation of the contracts for the current Hearing Officers which are due to expire June 30, 2014.

BY: Chairperson Fox

SECOND: Commissioner Read

VOTE: The vote was unanimous in favor of the motion

**Chairperson Fox:** Indicated that the next item under Item V. was:

B. Extension of Current Hearing Officer Contract(s)

She indicated that she would recuse herself from the discussion and motion because as an HR consultant she had established a business relationship with one of the Hearing Officers on the list.

**Commissioner Sanchez:** Asked Chairperson Fox if they were going to select 1 Hearing Officer from the north and 1 from the south. **Chairperson Fox:** Responded yes. **Commissioner Sanchez:** Indicated that he and Commissioner Mauger had a concern in the south as they did not believe that they could, without further information, make any determination for any Hearing Officer in the south. **Commissioner Read:** Stated that he understood that they should continue and not just pick 1 but continue with what was in place now until their contracts expired. He said that that was his understanding and what he had voted for with the motion. **Chairperson Fox:** Responded he was correct. **Commissioner Read:** Said if that was the case then Item V.B. would become moot and no further action was required. **Chairperson Fox:** Agreed. She acknowledged that Commissioner Sanchez had indicated he wanted more information if in a future agenda there was a listed item that would ask the Personnel Commission to select a Hearing Officer from the north and south. She asked Commissioner Sanchez what information and data he wanted to see. **Commissioner Sanchez:** Responded that he and Commissioner Mauger did not have sufficient information to determine the qualifications of Hearing Officers in the south. **Shelley Blotter:** Indicated that she wanted to repeat what had been said to confirm her understanding of what had been discussed. She said that they would be continuing the Interlocal Agreement with the Hearings and Appeals Division and there would be no end date to that. She said with the current Hearing Officers they would allow them to continue until their contract expired. She referred to Item V.B. on the agenda which stated that the Division was recommending that the Personnel Commission select 2 Hearing Officers, 1 from the south and 1 from the north to extend their contract for two more years so that they would have alternates to the Hearings and Appeals Division. She said if they felt the current Hearing Officers were not performing to their liking then the Personnel Commission did not have to select any of them and they could conduct a new recruitment and have new interviews. She said if they felt like 1 could be selected from the north then they could move forward with extending that contract. She said if they felt that there was not a good selection for a Hearing Officer in the south and would like them to recruit solely for the south, they could do that.

**Commissioner Mauger:** Stated that they had sent out approximately 57 surveys and 9 came back. He indicated in the south they had had for: 1. No responses; 2. 1 response; 3. 2 responses; and 4. 1 response. He said it was hard to make a decision with that kind of response. He added that they also did not have sufficient information. **Shelley Blotter:** Responded that Georganne Bradley and Lorna

Ward are Hearing Officers in the Hearings and Appeals Division so they have had very few Hearings before them. She referred to the other independent contractors, and stated that Gary Pulliam was formerly an independent contractor and was now part of the Hearings and Appeals Division. She said there were only 3 Hearing Officers from the south that had chosen to proceed. She said 1 of the Hearing Officers, Ann Elworth Winner, had contacted her on January 9, 2014 and withdrew her interest from extending her contract. **Commissioner Read:** Stated that they would be keeping the outside attorneys available for two more years. He asked if that was correct. **Shelley Blotter:** Responded their contracts expired on June 30, 2014. **Commissioner Read:** Stated that their contracts would expire on June 30, 2014. He stated that they wanted to renew now before June 30, 2014 to retain 1 in the north and 1 in the south. He asked if that would then be a new two-year contract. **Shelley Blotter:** Responded yes. He said in the north he wanted to recommend an attorney, Charles Cockerill, to have his contract extended for two more years as a Hearing Officer for the State of Nevada.

MOTION: Move to approve the extension of a Hearing Officer contract for Charles Cockerill for the north.  
BY: Commissioner Read  
SECOND: Commissioner Mauger  
VOTE: The vote was passed by a vote of 3 and Chairperson Fox recused herself from the vote.

**Chairperson Fox:** Referred the matter to the Commissioners in the south as to how they would like to go forward for the selection of a Hearing Officer. **Commissioner Sanchez:** Asked for a summary detailing the qualifications and background for the individuals so they could review them and make a decision. He said they could not make any decision at the current time. **Lee-Ann Easton:** Confirmed that they would provide that information by January 13, 2014. **Chairperson Fox:** Said it was her understanding that it would be an item on the next agenda so the Personnel Commission could take action to select a Hearing Officer for the south. **Commissioner Mauger:** Asked if the State had a position on the lack of response. **Commissioner Read:** Indicated that he understood the problem. He said that for the last 4 years in choosing Hearing Officers he had been on the committee to review the applications and make preliminary choices, interview the candidates and then vote. He said he thought they might want the same kind of information available to them on the candidates in the south. **Shelley Blotter:** Indicated that she wondered if they could ask the Deputy Attorney General whether the agenda would allow for the Personnel Commission to request a new recruitment for the south for the existing contracts as well as any new candidates. **Deputy Attorney General Shane Chesney:** Responded to Shelley Blotter that that would go beyond the scope of the agenda. **Shelley Blotter:** Responded that was fine. She asked if they could, at the next meeting, put that as an agenda item. **Chairperson Fox:** Stated that there would be an agenda item in April 2014 that prior to the meeting the DHRM would provide to the Commissioners in the south the resumes and information for the current Hearing Officers in the south so they would be in a position to make an informed selection.

## VI. REPORT OF UNCONTESTED CLASSIFICATION CHANGES

A. Postings #06-14, #07-14.

## VII. PUBLIC COMMENT

Read into record by **Chairperson Fox:**

No vote or action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020) Comments will be limited to three minutes per person and persons making comment will be asked to begin by stating their name for the record and to spell their last name. The Commission Chair may elect to allow additional public comment on a specific agenda item when the item is being considered.

**Chairperson Fox:** Asked if there was anyone for public comment in the north or south.  
**Commissioner Sanchez:** Indicated there was one person.

**Ron Cuzze,** President, Nevada State Law Enforcement Officers' Association: Asked that once these changes went into effect would there be a way to see results over the span of a year. **Chairperson Fox:** Responded that Commissioner Mauger had asked for the DHRM to create a tracking survey over the next year so they could track the decisions, timeliness and other information concerning the Hearing Officers. She confirmed that his association could obtain access to that survey. She said once the information was complete a copy would be provided when it was posted as an agenda item for the Personnel Commission.

#### **VIII. DISCUSSION AND ANNOUNCEMENT OF DATES FOR UPCOMING MEETINGS**

**Chairperson Fox:** Noted a meeting had been scheduled for April 11, 2014 from 9 a.m. to noon. She indicated that they had discussed as possibilities meetings in July, August or September. She indicated she would be in Las Vegas in September so proposed tentatively September 12, 2014 during the morning.

#### **IX. ADJOURNMENT**

**MOTION:** Moved to adjourn the meeting  
**BY:** Chairperson Fox