

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
DEPARTMENT OF
TRANSPORTATION,

Appellant,

vs.

JOHN BRONDER,

Respondent.

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Supreme Court Case No. 79695
Elizabeth A. Brown
Clerk of Supreme Court

On Appeal from the First Judicial District Court, Carson City, Nevada

APPELLANT'S APPENDIX

VOLUME 2 OF 5

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 28th day of January, 2020, I electronically filed the foregoing APPELLANT'S APPENDIX – VOLUME 2, with the Nevada Supreme Court by using the e-filing system for the Nevada Supreme Court. The following participant in the case who is a registered user will be served by the e-filing system.

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An Employee of the
Office of the Attorney General

1 that a Resident Engineer would have in respect to--I don't
2 remember if it was letters of authorization or change orders,
3 but changes to the contract, effectively. I was a little
4 taken back with one of the responses that--I figured it was a
5 slam dunk question for both of the candidates. Both
6 candidates have functioned in that position. Mr. Bronder for
7 six or seven months prior when he was in the Manager I
8 position before he came to the Construction Office. And then
9 the other candidate as well has been in and out of the
10 position, performing the duties.

11 So, I figured it was a slam dunk. It was an easy
12 question to answer. When the response came back, something to
13 the effect of, I don't know that, does anybody know that
14 answer for that question, that authority level, unless they're
15 a RE right now. It struck me as odd, just simply from the
16 perspective that, wait a minute you were a RE--well, you may
17 not know the exact answer and not everybody retains 100% of
18 everything depending on [inaudible]. I was expecting a
19 follow-up, but I would go to the construction manual and it's
20 listed under the contract authority of the Resident Engineer.
21 That didn't happen either, it was just dismissed. I'm not
22 going to answer the question.

23 I thought, wow, really?! And the follow-up question
24 tied into something--tied to it as far as the authority. I
25 thought, if you--it struck me as odd that an individual who has

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1 been in the position, who has done the job should have had
2 that answer to that question. Either at their fingertips or
3 know where to go get the answer. That's really what a
4 construction manager does, day in and day out. I don't know
5 the answer to everything, nobody does but you need to know
6 where to go get it. The fact that that doesn't present. So,
7 it was an oddity. There was--some of the others, there were
8 short, poor answers that didn't necessarily represent what I
9 felt was a good skillset for going forward. The other
10 candidate did pretty well.

11 LORI STORY: So, can you honestly tell us
12 that if in fact Mr. Bronder had been the best candidate for
13 that position, or if you interviewed him in the future and he
14 was the best candidate for the position, would there be a
15 reason not to offer him that position?

16 STEPHEN LANI: No. The best candidate--the best
17 candidate is always advance or should always be advanced
18 within the position. If you come forward with the best set of
19 skills, the ability to apply it, the ability to demonstrate
20 what's necessary to make the position the best that it can be,
21 you're the candidate that's selected.

22 LORI STORY: I don't have any further
23 questions.

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1 HEARING OFFICER: We're running up to the lunch
2 hours, so I think we ought to take a break for lunch. Will
3 half an hour be sufficient for everybody?

4 THOMAS DONALDSON: Sure.

5 HEARING OFFICER: I don't know, 12:30--well, 30
6 minutes, 12:35.

7 LORI STORY: 12:35.

8 HEARING OFFICER: Get back, I'd like to make sure
9 we get through today if--

10 LORI STORY: This was probably the longest.

11 HEARING OFFICER: Well, that's right. I'm getting
12 to a point where I'm going to say, how much more do you have
13 because we do want to pay attention to our time constraints.

14 LORI STORY: Yes.

15 HEARING OFFICER: And, we'll have an opportunity
16 for cross-examination. So, you're not dismissed yet.

17 STEPHEN LANI: Okay.

18 HEARING OFFICER: Thank you.

19 OFF THE RECORD

20 ON THE RECORD

21 HEARING OFFICER: All right. Welcome back. This
22 is--right on time, 12:35. Everybody had a nice time for their
23 break, as short as it was. And, you've completed your
24 examination?

25 LORI STORY: That's correct.

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1 HEARING OFFICER: Opportunity for Mr. Donaldson,
2 for cross-examine of Mr. Lani.

3 THOMAS DONALDSON: Thank you, Steve, how are you?

4 STEPHEN LANI: Good.

5 THOMAS DONALDSON: So, back in 2017, the hourly
6 rates weren't provided to the Transportation Board when they
7 were considering these consultation agreements, is that
8 accurate?

9 STEPHEN LANI: For the review?

10 THOMAS DONALDSON: Yes.

11 STEPHEN LANI: They have—I'm not 100% sure
12 what's in the packet proposal for the agreement that they
13 actually see. I'd have to go back and look at that individual
14 one to see. The—when you say the "hourly rates", the loaded
15 hourly rates for specific rates of compensation are part of
16 the cost proposal but I believe that information is actually
17 withheld. Board Members can see it but it's not part of the
18 public packet that's released.

19 THOMAS DONALDSON: There was testimony earlier by
20 Mr. Kaiser that NDOT now has a standard hourly rate for
21 consultants, is that accurate? Or, rates, I guess, the range—

22 STEPHEN LANI: If—Mr. Kaiser was referring to
23 the fact that we work within a rate range by classification.
24 It's not a fixed rate by position. We have a range that we
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1 work with. So, yes, similar to what I just said, we have
2 established rates by position.

3 THOMAS DONALDSON: Is that something relatively
4 new?

5 STEPHEN LANI: No, that has been in existence
6 for as long as I can recall.

7 THOMAS DONALDSON: He said there was a change in
8 the process of negotiating contracts with consultants but he
9 wasn't familiar with it but he thought that was part of it was
10 that they're using these standard rates now.

11 STEPHEN LANI: Through the years, there's been
12 some evolution of the means and methods. Twenty years ago,
13 the Department used cost plus fixed fee for construction
14 management services. That's no longer the case. Specific
15 rates of compensation in the more recent time has evolved,
16 those specific rates have also included some of the more
17 direct costs such as vehicles, radios, cell phones, etc.,
18 personal protective equipment, that were direct expense to the
19 contract.

20 So, there's been some evolutionary change with time
21 to try and simplify the process and get to a more common
22 number as opposed to broad.

23 THOMAS DONALDSON: Has there been anything
24 specifically regarding the process in the last year or two,
25 changes?

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1 STEPHEN LANI: The procurement process?

2 THOMAS DONALDSON: Yes.

3 STEPHEN LANI: Not--the procurement process is

4 outside the realm of what we do.

5 THOMAS DONALDSON: Oh, okay.

6 STEPHEN LANI: That's managed through Agreement

7 Services. So, to specific details as to what's evolved, not--

8 THOMAS DONALDSON: Familiar.

9 STEPHEN LANI: Not familiar enough to be able

10 to speak to it.

11 THOMAS DONALDSON: Okay. So, regarding your

12 hypothetical, I think it was an Engineer Tech.

13 STEPHEN LANI: Engineer Technician.

14 THOMAS DONALDSON: Okay, Technician, okay.

15 STEPHEN LANI: Okay.

16 THOMAS DONALDSON: Where you referenced to the

17 prevailing rates, the consultants don't have to pay prevailing

18 rates, just for clarification, right?

19 STEPHEN LANI: By law, the contractor's

20 individuals would, the consultant individuals would not. But

21 that gives you a ballpark as to what the private industry--

22 individuals in the private industry could be expecting for

23 similar type of work.

24 THOMAS DONALDSON: Just wanted to clarify.

25 STEPHEN LANI: As a reference point.

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1 THOMAS DONALDSON: And in this audit that NDOT
2 conducts on, I guess the bills, comparing it to the
3 consultation or the consultant's agreement, that's just to
4 make sure that the rates that are in the invoices or what's in
5 the contract and everything is consistent between the billing
6 and the contract, correct?

7 STEPHEN LANI: That's part of it. In addition
8 to that, they are making sure that the overall scope of the
9 procurement as defined in the agreement was followed in the
10 execution of the agreement as well. So, if there was—if there
11 are rates that are established, that they have the backup and
12 support for that, part of that agreement is the consultant's
13 certification of their rates as well and they're back checking
14 those for that information as well.

15 THOMAS DONALDSON: But they're not considering the
16 legality of the contract, if you will, that's already a done
17 deal at that point, correct?

18 STEPHEN LANI: Yeah, I'm not an Internal
19 Auditor, I couldn't speak to it specifically, but my
20 understanding is—the agreement is what it is.

21 THOMAS DONALDSON: Yeah.

22 STEPHEN LANI: Yeah.

23 THOMAS DONALDSON: Do you recall that the—I believe
24 it was on May 5, 2017 when Mr. Bronder was rejected from
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1 probation that meeting that you had of him asking to return to
2 Elko, to his position in Elko.

3 STEPHEN LANI: I'm sorry, the-

4 THOMAS DONALDSON: Do you recall Mr. Bronder asking
5 to be returned to Elko, to his position there?

6 STEPHEN LANI: And I don't recall the exact-
7 that was part of the question that he had asked and to the
8 effect is, can I go back to my job or what about Elko and I
9 believe Ms. Foerschler's response was that he would have to
10 contact Boyd Ratliff at the District to discuss that with him.
11 That was not within our scope as part of the Construction
12 Division. That was up to Boyd.

13 THOMAS DONALDSON: That's all I have.

14 LORI STORY: I don't have anything.

15 HEARING OFFICER: Okay. I just had one question,
16 I guess about the audits. Those are internal audits, that is
17 by the term, "internal", DOT does the auditing. The audit
18 that you reviewed here was a Department of Transportation
19 audit was it not?

20 STEPHEN LANI: That is correct.

21 HEARING OFFICER: So, there's not a separate
22 federal audit, or does that occur on occasion?

23 STEPHEN LANI: We are audited through various
24 processes. The specifics of this, the individual agreement,
25 all of those are audited through our Internal Audit Division.

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1 The process itself can be audited by outside entities as well.
2 We've undergone several of those, [inaudible] they can be
3 federal or other state agencies that come in to do that.

4 The audit in reference to this case was in fact an
5 internal audit specific to this agreement performed by the
6 Department of Transportation's Internal Audit Division.

7 HEARING OFFICER: And, while there may be others,
8 it's also customary for DOT to do these internal audits?

9 STEPHEN LANI: It's a requirement of every
10 agreement that an audit be performed following or as part of
11 the close out of the project.

12 HEARING OFFICER: Okay. And the timing of those
13 audits are always at the conclusion of the project, is that
14 correct or are there interim audits as the process is under-
15 project is underway.

16 STEPHEN LANI: Typically, they are performed at
17 the end. An individual project manager for a long project
18 could make a request for an interim audit be performed but
19 given the short duration of this particular project, that
20 doesn't make--didn't fit within the timeframe, it doesn't make
21 sense.

22 HEARING OFFICER: You mentioned at the--regarding
23 the decisions to terminate the probationary status of Mr.
24 Bronder that yourself, Sharon and Jeff were part of that
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1 committee, if you will, or panel that made the decision. Is
2 it Sharon's decision to make, as the appointing authority?

3 STEPHEN LANI: Ultimately, yes. She's the
4 Chief--she was the Chief Construction Engineer, it would be her
5 decision in the end, yes.

6 HEARING OFFICER: All right. So, even though
7 there's, if you will a committee or a panel of the three of
8 you, it was Sharon's decision to make.

9 STEPHEN LANI: As the appointing authority, she
10 ultimately has to make the decision. She's [inaudible].

11 HEARING OFFICER: And, one of the pros and cons
12 comments you made, the indication was that Mr. Bronder was not
13 going to be the best fit. Is that--what does that mean?

14 STEPHEN LANI: I don't know the context of the
15 question.

16 HEARING OFFICER: Well, it may not be the greatest
17 question to ask, but I'm trying to figure out--

18 STEPHEN LANI: So, the context in response, so--

19 HEARING OFFICER: --what was meant when the
20 termination was--part of the consideration was, he wasn't the
21 best fit.

22 STEPHEN LANI: When we--when all individuals are
23 considered and evaluated and brought in, you have the
24 individual's application and any information they provide.
25 You have 30 minutes to an hour worth of interview time with

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1 that individual and then a check of the references. That
2 doesn't necessarily give you a complete picture of how an
3 individual performs under any given situation.

4 So, overall, best fit being that my-my take on that
5 is that there are better suited--there were other individuals,
6 or a better set of qualifications for somebody to manage the
7 Constructability Section and the Team to lead them forward in
8 what needed to happen within that group at the time.

9 HEARING OFFICER: Is it fair to say that the job
10 activities and responsibilities that Mr. Bronder in Elko were
11 different than those for which he was responsible for in
12 Carson City, on the transfer?

13 STEPHEN LANI: To a degree, yes. The duties
14 and responsibilities of the Resident Engineer position, that
15 he [inaudible] Resident Engineer position he retained in Elko
16 are at the project level of implementation and representation
17 for the Department in the construction management role. As
18 the position is a manager for the Constructability Team, it
19 was more at the program level and the administrative. We lay
20 out the program that those Resident Engineers are implementing
21 and working through.

22 HEARING OFFICER: I kind of get the sense that
23 it's a little bit broader responsibility--range of
24 responsibilities.

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1 STEPHEN LANI: We're at a program level, not
2 the project level. Yes, we-

3 HEARING OFFICER: In Carson City.

4 STEPHEN LANI: Yes.

5 HEARING OFFICER: Okay. When the decision was
6 made regarding the probationary status for Mr. Bronder, what
7 eval-was the evaluation limited to those time and those
8 activities in Carson City?

9 STEPHEN LANI: Yes.

10 HEARING OFFICER: All right. There wasn't any
11 consideration of his prior service at-was there any prior-I
12 shouldn't say it that way. Was there any prior consideration
13 of his prior service at-for the, I suppose roughly eight
14 months that he was in Elko?

15 STEPHEN LANI: No. Effectively, he was in a
16 new position with a-with only a short probation-a short amount
17 of period left within his probation. So, his-his overall
18 performance was not part of our consideration. His overall
19 performance in the role in Elko was not part of our
20 consideration as to how he was performing [crosstalk]

21 HEARING OFFICER: Well, I can appreciate your
22 dilemma in part because he had a 12-month probationary status,
23 but he had two separate job activities.

24 STEPHEN LANI: Correct.

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1 HEARING OFFICER: When somebody comes in on a
2 transfer such as in this case, Mr. Bronder came into a new
3 role, new responsibilities, a bit broader—is there no way to
4 continue the, or extend the probationary period that would
5 relate to the new activities and responsibilities?

6 STEPHEN LANI: I don't know the answer to that
7 question.

8 HEARING OFFICER: Okay.

9 STEPHEN LANI: If there's an option to extend
10 probation.

11 HEARING OFFICER: All right.

12 STEPHEN LANI: That would be a question I would
13 refer to our human resources.

14 HEARING OFFICER: Well, because you've indicated,
15 I think very candidly that there's a learning period and
16 there's a lot of nuances that come within the learning period
17 that you can only pick up by virtue of going through that
18 learning period, attending things and seeing things and
19 participating.

20 STEPHEN LANI: Right.

21 HEARING OFFICER: So, the time that you have to
22 make your decision on probation is limited to essentially,
23 what, the three months or three and a half months that were
24 there. And, Carson City as opposed to what the overall
25

1 picture looked like for an employee in a 12-month probationary
2 period.

3 I'm trying to get a sense of how the evaluation
4 approach was for the probationary considerations. I gather it
5 was just limited to the activities related to the Carson City
6 responsibilities.

7 STEPHEN LANI: Yes. Our evaluation is
8 considered--was considerate of his roles and responsibilities
9 that he'd been assigned in taking the position in Carson City.

10 HEARING OFFICER: Okay. Have you been in meetings
11 in which, similar to the meeting you were with Sharon and
12 Jeff, I use first names because it's easier for me remember.
13 Probably you as well, sometimes. Like, the May 5th meeting on
14 probation. I gather from what you said that this was more of
15 a report to Mr. Bronder that a decision has been made when
16 asked about what was discussed, it was usually, here's the
17 decision, do you have any questions about the decision.
18 Rather than, is the decision open for review.

19 STEPHEN LANI: I believe that's a correct
20 assessment of the May 5th meeting with Mr. Bronder, yes.

21 HEARING OFFICER: And, is that kind of the typical
22 of the--have you been in other probationary evaluation
23 situations?

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1 STEPHEN LANI: Not in an administrative role.
2 As a supervisor, I have been involved, but not with the direct
3 meeting when the appointing authority released the individual.

4 HEARING OFFICER: All right. In the selection
5 process of--related to qualifications. I always find it
6 interesting that in the RFP its related to qualifications and
7 not the cost. You have no idea, it's after the costs or after
8 the fact which no doubt can leave some people scratching their
9 head and some unsatisfied if they weren't the chosen party.

10 In terms of former DOT employees, there's a cooling
11 off period, not only under the Board of Examiners, but there's
12 also ethical provisions that have cooling off periods about
13 people leaving state government overall and going in to the
14 private sector and the concerns of whether or not there should
15 be an allowance or disallowance of whether or not it's
16 appropriate to take a job or participate in anything.

17 Do the consultants who participate in these
18 processes and this is as much education just for me. That is,
19 do they have people such as the construction managers on staff
20 or do they decide, this is a project we're going to bid on and
21 now we better go out and get some staffing. How do they beef
22 up to respond to an RFP?

23 STEPHEN LANI: The exact answer is, it depends
24 on the firms' business model. There are firms that have core
25 staff individuals, core members that have been part of their--

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1 part of their firm that stay and within the hierarchy
2 typically--if you're referring to the construction manager and
3 the upper level Resident Engineers, they tend to be more
4 permanent staff for the consulting firms.

5 As you drop further into the technical levels of the
6 testers and the inspectors, most of those--pardon the
7 appearance of a slang term, but they're a transient nature.
8 Those individuals migrate from firm to firm project to
9 project. They tend to be less tied to a firm, as more they
10 are tied to the--wherever the work is, is where they're going
11 to go.

12 HEARING OFFICER: Well, I was trying to get my
13 head around the notion that both the--you as well as Mr. Kaiser
14 had indicated that there is an advantage of using people such
15 as former DOT retired employees or just simply former NDOT
16 employees in certain roles because you don't have to train
17 them. The qualifications are something that you don't have to
18 worry about whether they're qualified because you have that
19 prior experience of what they know or don't know. That's why
20 I was wondering if--if people are on board that's one thing, as
21 regular staff people at certain levels. But if in some of
22 these cases where you have some construction managers, if
23 these are people who are sitting out there, kind of separate,
24 not generally employed regularly by one company, but available

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1 as consultants to hire on for given projects. What's the
2 experience? Is it, as you say, it depends on the company?

3 STEPHEN LANI: The business model of the
4 company will dictate whether they retain staff on some type of
5 retainer element. We have--

6 HEARING OFFICER: At the necessary levels.

7 STEPHEN LANI: At the necessary levels,
8 [inaudible] there are some and there are others that work to
9 sub that work out. It's the private business model and they
10 can't afford to--nobody can afford to keep a 20 or 40 person
11 staff on hand just in case a project comes up in the next two
12 years. So, they will--they'll work the labor pool of what's
13 available. Those tend to be for the lower--the lower level
14 positions, [inaudible] that's out there.

15 You tend to find, if you look across a long-term
16 pattern, there's an individuals that migrate in certain
17 directions. It's a pretty specialized field. It's just--

18 HEARING OFFICER: When you were talking about the
19 procurement process, evaluating the review of the RFP
20 responses, I had this note that the procurement process, the
21 people generally involved in that, the team or whatever of
22 people that may be involved in that are kind of separate.
23 Kind of, you said a separate side of the operation. What is
24 that?

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1 STEPHEN LANI: Our procurement process is--each
2 element of our process is separated by kind of a [inaudible]
3 element. So, the individuals that are on the selection
4 committee, for instance, may not necessarily even be the
5 individuals that are involved in the negotiation for the cost
6 of the agreement at the end.

7 Each individual agreement is kind of based upon its
8 needs and what's there. So, those individuals don't have--you
9 mentioned the oddity of, we select professional services on
10 qualifications base and cost is not a factor, by law. The
11 federal law prohibits us from consideration of cost in those
12 procurements. So, that selection committee is looking simply
13 at qualifications. So, we try to put together the team that
14 can cipher the best out of that.

15 HEARING OFFICER: Well, in relationship to Mr.
16 Bronder, I'm trying to see the correlation, relationships--if
17 there are separate processes and Mr. Bronder had a broader
18 responsibility in his Carson City activities, and for the time
19 that he was doing it, really in relationship to a 12-month
20 period it's only 25% of--it's a quarter of the time of his
21 probationary period, which he was in Carson City. Of the 12
22 months, three months here in Carson is if my arithmetic is
23 correct, it would be a quarter of the time.

24 So, I'm trying to figure out if all these activities
25 that NDOT does by way of construction--an RFP for a

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1 construction project, there's a procurement process and those
2 are qualification based. Then there's a costing portion of
3 that, would Mr. Bronder's role—would Mr. Bronder had a role in
4 that, second part of that, the costing process?

5 STEPHEN LANI: Yes. Within our Division, we
6 have multiple agreements and multiple—at various stages
7 throughout the entire year. Without actually going back and
8 looking, we have a number of agreements that are in any one of
9 those phases and stages at any one time in our office.

10 So, beginning exposure, you may not be a—it will
11 take you time to go from the beginning through the end of any
12 individual agreement. Your exposure to all elements of the
13 process can occur in a very short period of time, across a
14 multitude of agreements though.

15 HEARING OFFICER: Well, I noticed that in this
16 particular—one particular case, let's use an example of
17 [inaudible] process. The audit was done in January 2019. So,
18 it's much, much, much after the contract went out. Every
19 project has that timing element so, trying to figure out or
20 trying to understand—I should say that.

21 Trying to understand in the time period that Mr.
22 Bronder was in Carson City and subject to the evaluation of
23 his performance there, what part of the activities that relate
24 to the costing, and particularly the consultant's rates and
25 the issues that he raised in the conversation with you about—

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1 earlier on when he heard in April that there were some
2 concerns about these pricing costs and took the matter up with
3 you.

4 You said, it was kind of a you use the time, it's
5 kind of a learning process in your discussion. It's one thing
6 to say, well here's this stuff and it's under the federal
7 guidelines and all this stuff and if you take a look at
8 federal guidelines, you could spend a good share of a year if
9 not several years going through them all and trying to figure
10 them out and they'll be changing as regulations are one to do.

11 So, in terms of your response to the receipt of the
12 information and expressions of concern by Mr. Bronder that
13 these pricing and these costing things were of concern. How
14 did you communicate to him in a learning process, as you say--
15 was he instructed to go up and take a look at some of these
16 other things or just wait, you'll see how this works out over
17 time? Because I don't know how many contracts he was subject
18 to, but this one he addressed based on what he'd heard.

19 It's a poorly crafted question, I think you kind of
20 get my drift, don't you?

21 STEPHEN LANI: So, not having a photographic
22 replay of exactly how it played out, it's not uncommon for
23 people to have questions. There is a basic process to go
24 through. So, it wasn't--I can tell you that it wasn't, go look
25 it up, here's the CFRs that governance it. It's, you know,

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1 let's look at this particular—I'm a very detailed oriented
2 person and it's, let's look at that particular agreement.

3 You know, Mr. Bronder had been involved with the
4 negotiation meetings, so he had—he had something that he
5 already—what the specific rates that we were talking about.
6 The individual, the scope of services and how that evolved
7 into what we were ultimately executing in this agreement that
8 we put before the Transportation Board for approval.

9 So, I would basic—it would've been a look back at,
10 let's look at this particular one. We estimated that it was
11 going to be about this much. It came in at about that range.
12 Here's where we increased costs. Here's where we decreased
13 costs. Here's what's changed since the day that we initially
14 estimated the cost of the job, compared to what the
15 consultant's cost proposal is. Here's the modifications we
16 made during the negotiations, of which, portions of that
17 project he touched along the way, so he had that—some of the
18 detailed information. Then, here's how it fits within the
19 broader picture, which he would've already have seen that but
20 like you said, it's a lot of information. He would've already
21 seen, here's our multiple year average for a given
22 classification or position. All of these positions rates are
23 within those ranges, it's okay.

24 Then, as the gut check at the end of the day, if I
25 divide the total cost of this agreement against what we know

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1 the cost of the construction is forecasted to be, it still
2 passes the percent check of the big picture.

3 So, while any individual rate may fluctuate within
4 that range and it seems like a lot of money--

5 HEARING OFFICER: Well, in this particular case,
6 there apparently were some concerns and it sounds as if there
7 were some concerns overall, over time, regarding some of these
8 rates that were available to contractors, consulting
9 contracts. And that--I noticed that one of the Exhibits that
10 we talked about was a portion in which--and I'm trying to
11 remember the Exhibit. Tell me where it is. It's the one in
12 which Mr. Bronder indicated that he'd done some calculations
13 and had some expressions of rates between Assistant Resident
14 Engineer, Grade 40--

15 LORI STORY: That was his appeal narratives,
16 sir.

17 HEARING OFFICER: Which one was it for you? I
18 have it in my original--

19 THOMAS DONALDSON: Exhibit A.

20 HEARING OFFICER: --stuff that was--

21 LORI STORY: It's Exhibit A.

22 HEARING OFFICER: Exhibit A?

23 THOMAS DONALDSON: ER005.

24 LORI STORY: And, it's--yeah.

25

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1 HEARING OFFICER: 05. That's right. Sitting
2 right here in front of me. So, is it your view that when Mr.
3 Bronder came to you with, to express his concerns about this,
4 that you were going to treat this as a learning experience in
5 a conversation with him. Did you tell him that, well you'll
6 have to wait and see a bit how this works out or did you more
7 largely tell him, we're not, we don't have a problem because
8 this is how we--we calculate this stuff?

9 STEPHEN LANI: The latter of the two. We
10 would've taken the time and like I said, without actually
11 going back, we would've taken the time, sat down, this is how
12 this agreement lays out. This is the backup. This is the
13 support. This is how this developed. Let's look at the
14 details of this exact--so, it wasn't let's talk about this
15 later, we'll figure it out, you'll learn more--

16 HEARING OFFICER: Okay. I'm not--

17 STEPHEN LANI: --it was here's the agreement.

18 HEARING OFFICER: I didn't get the sense that you
19 were dismissive, but I'm trying to get what the content was
20 because I get the sense from some of the minutes of both the
21 Board of Examiners, as well as at different times, that there
22 were concerns. Expressions by the government, by Member
23 Skancke that some of these contracts needed to be not
24 necessarily revisited, but some of the concepts within the
25 contracts needed to be revisited.

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1 You indicated that there's some evolution to some of
2 these things over time, which is--only reflects the dynamics of
3 a marketplace and what goes on. So, what I'm trying to figure
4 out, if somebody is transferring in new to a situation and I
5 don't know if this is the first contract or not for Mr.
6 Bronder, but this is not an idle concern, specific to Mr.
7 Bronder. It appears to be a more larger concern. Not only to
8 Members of the Transportation Board, but also just to NDOT
9 overall, that we're not always satisfied with what we've done
10 yesterday. We want to know that we're going to--if there's
11 some questions, or some criticisms, or some concerns that
12 we're going to try and address those and see whether or not
13 there's a better way, a better practice.

14 STEPHEN LANI: Absolutely. And we're, you
15 know, just because we've done it that way always is never a
16 good response for me personally. Part of the evolution is the
17 migration of the Department within the Construction Division
18 from cost plus fixed fee to specific rates to making sure that
19 we have--the rate tracking that we have performed for a
20 considerable amount of time and we typically only backwards in
21 three years because of the market [inaudible] but we've had
22 that information and we continue to track that.

23 So, the--when the questions do get asked and we do
24 have to support the decisions that we have with factual
25 information behind it, we have those decisions and we can see

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1 where the market trends are going and where things are headed
2 and make the best decision that's there. And so, it's not--
3 it's something that we constantly evolve on.

4 HEARING OFFICER: Have you ever had an experience
5 in which an employee has transferred from the activity in
6 Carson City to another location and been subject to
7 probationary period and that probationary period turns out to
8 be unsatisfactory and the employee wishes to come back to the
9 Carson City experience that he previously held?

10 STEPHEN LANI: I've not been personally exposed
11 to that, no.

12 HEARING OFFICER: Okay. Do you know whether there
13 is any, generally speaking, any opportunities for those who
14 are in probationary period situations and that service in the
15 probationary time is less than satisfactory for the purposes
16 of that particular job, but is there has an eligibility to
17 return to a former job?

18 STEPHEN LANI: I'm not a human resources, so
19 there's a difference between a probationary and a--the term
20 probationary and--

21 HEARING OFFICER: Versus permanent.

22 STEPHEN LANI: --versus a permanent employee and
23 you're on trial versus probation. There is that, but a truly
24 probationary employee that does not have a vested element

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1 within there, I'm not aware that there is any backwards
2 progression, [crosstalk]

3 HEARING OFFICER: Well, I guess I'm trying--again,
4 I'm trying to get a sense of the evaluation made of Mr.
5 Bronder and the circumstances in which he is a probationary
6 employee. That initiated, from Elko and responsibilities
7 there, a transfer after some eight, eight and a half months,
8 with a whole different pinnacle of responsibilities, perhaps
9 more broader, perhaps more sophisticated and how that
10 evaluation is made between really two jobs.

11 STEPHEN LANI: When Mr. Bronder was offered the
12 position, my recollection is we had several fairly detailed
13 discussions about what the expectations were, given the job
14 and what he was coming into. The--he didn't--at the end of the--
15 as we approached the end of the probationary period, it was
16 determined that he hadn't met--he didn't meet those levels that
17 were discussed. The issue of the consultant negotiations and
18 that process was not even a factor within what we were having
19 an expectation or a measure of his performance in that area.

20 HEARING OFFICER: So, the evaluation was within
21 the most recent activity, not the former activity. The former
22 activity did not have any prior performance evaluations, three
23 7-month periods. So, essentially, this was the first
24 evaluation that was made in April?

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1 STEPHEN LANI: I was not part of that
2 evaluation.

3 HEARING OFFICER: Well, the question, when you do
4 an evaluation, for the purposes of determining whether
5 probations should or should not be rejected, don't you look at
6 the evaluations that have been made by people in the course of
7 a person's probationary employment?

8 STEPHEN LANI: I would think so. I was--keep in
9 mind, I was not Mr. Bronder's supervisor in his direct chain
10 of command at the time. So, I would--I would not have
11 necessarily been the one performing the evaluation or
12 determining [crosstalk] that.

13 HEARING OFFICER: I'm not talking about performing
14 the evaluation, I'm talking about simply knowing about the
15 evaluation of an employee who is at issue, the subject of
16 whether or not to continue the employee as a permanent
17 employee or reject the employee on a probation--who's on a
18 probationary status.

19 LORI STORY: Mr. Lamboley, I can proffer that
20 Ms. Foerschler can address that question.

21 HEARING OFFICER: Well, he's a participant, I want
22 to know what he knows of that meeting.

23 STEPHEN LANI: When you say that meeting, I'm--
24
25

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1 HEARING OFFICER: Well, when you had the meeting,
2 was there any discussion of any employment evaluation that had
3 been previously made of Mr. Bronder?

4 STEPHEN LANI: Outside of the Construction
5 Division? We were focused on his overall performance as a
6 Construction Manager within the Construction Division and how
7 he was meeting the expectations and the requirements--

8 HEARING OFFICER: In Carson City.

9 STEPHEN LANI: --[crosstalk] in Carson City,
10 yes.

11 HEARING OFFICER: All right, thank you.

12 THOMAS DONALDSON: I guess just one follow-up. If
13 you go to, it's Exhibit A, go back to Page ER019. Were you
14 aware of Mr. Bronder's meets standards overall performance
15 evaluation from April 24, 2017 when you had that meeting
16 regarding rejecting him from probation?

17 STEPHEN LANI: I didn't actually lead the
18 evaluation, but I was aware that he had been given an--that
19 he'd been evaluated.

20 THOMAS DONALDSON: Did you know the rating on the
21 evaluation?

22 STEPHEN LANI: [pause] I don't--I'd have to go--
23 no, the overall? No. We were focused on individual tasks.
24 The meetings that we had--the meeting that we had prior to his
25 dismissal was focused on, was he performing the tasks and the

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1 responsibilities as what they were, what we needed to go
2 forward.

3 THOMAS DONALDSON: Did you not review this
4 evaluation at that meeting?

5 STEPHEN LANI: I don't recall.

6 THOMAS DONALDSON: Or at any time before he was
7 rejected?

8 STEPHEN LANI: I don't recall.

9 HEARING OFFICER: I thought the answer to that has
10 already been asked and answered and it was no.

11 THOMAS DONALDSON: I just wanted to clarify.

12 HEARING OFFICER: Okay. No, but I'm--that's
13 different. When you say, I don't recall as to no I didn't.

14 STEPHEN LANI: Well, I did not do the
15 evaluation. And, did I review the evaluation and make that a
16 determining fact, no.

17 HEARING OFFICER: Okay.

18 THOMAS DONALDSON: That's all I have.

19 LORI STORY: I had a question. Do you know
20 whether when Mr. Bronder was considered for the transfer, when
21 he was--was the fact of his probationary status discussed at
22 all? Was there any discussion of the short period of time he
23 would have to prove himself in construction?

24 STEPHEN LANI: Your question is, was that part
25 of the consideration we were, to make the offer?

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1 LORI STORY: Yes.

2 STEPHEN LANI: Yes, it was. That was also why

3 it was discussed with Mr. Bronder when he was offered the

4 position.

5 LORI STORY: So, it was discussed with him.

6 STEPHEN LANI: Yes.

7 LORI STORY: He was made aware that he had

8 this short period of time.

9 STEPHEN LANI: Yes.

10 LORI STORY: So, going back to the contract

11 choices. If the first choice for qualifications is unwilling

12 or unable to negotiate with you to a price range within your

13 allowed rates, are they still given the contract?

14 STEPHEN LANI: No.

15 LORI STORY: What happens?

16 STEPHEN LANI: We terminate negotiations and

17 make a request to move to the number two ranked partner.

18 LORI STORY: So, in fact, cost does become a

19 serious and even terminable factor if they can't meet the

20 rates you require, they're not awarded the contract.

21 STEPHEN LANI: Yes. And it may not just be

22 cost. If we're unable to come to terms on the final

23 resolution or the scope of services or anything, there could

24 be anything during negotiations, if we don't feel it's in the

25 best interest of the Department and the taxpayers, the

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1 negotiations will be terminated and we'll make a request to
2 move to the next best partner.

3 LORI STORY: Okay. And, just to confirm,
4 during the meeting you had with Sharon Foerschler and Mr.
5 Freeman, to consider whether or not to release Mr. Bronder
6 from probation, was there any discussion of reaching out to
7 Mr. Ratliff to find out how he had done or any consideration
8 of his performance previous?

9 STEPHEN LANI: I don't recall. That would've
10 been to Sharon and I don't recall—I didn't make any outreach
11 for what was there.

12 LORI STORY: Okay. But your concern was
13 whether or not he could perform the job he was in with
14 Construction, rather than whether or not he could perform the
15 job in management that he transferred out of—or, in Elko that
16 he had transferred out of.

17 STEPHEN LANI: Correct. Our concerns were
18 focused on his ability to function as a Constructability
19 Manager within the Construction Division and how those duties
20 and responsibilities are going to be satisfied as we move
21 forward.

22 LORI STORY: And, if you didn't make that
23 determination before the end of his probation, and yet, his
24 performance didn't improve, what would you do?

25

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1 STEPHEN LANI: We-working down the corrective
2 action and possible disciplinary process because it's
3 effectively, if an employee is not able to perform the
4 necessary levels, to effectively do the job then you start
5 down the discipline process. The training, the opportunities,
6 the coaching, into whatever else is necessary to try and get
7 things righted. Ultimately, if it doesn't work out, you begin
8 the process or that's part of the process-

9 LORI STORY: That's a long process.

10 STEPHEN LANI: -of termination. Yes.

11 LORI STORY: And finally, your understanding
12 of a probationary release, does there have to be justification
13 for releasing a probationary employee, in your understanding?

14 STEPHEN LANI: No, the-my understanding is
15 there is not. There can't be discrimination or release for
16 that, but there does not have to be a solid justification.
17 They don't have to receive multiple substandard evaluations
18 before you can say, probation, sorry, we don't feel you're the
19 right candidate under probation, we're sorry.

20 LORI STORY: I don't have any other
21 questions.

22 THOMAS DONALDSON: No follow-up.

23 HEARING OFFICER: All right. If there are no
24 further questions of Mr. Lani, you're excused, thank you very
25 much.

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1 STEPHEN LANI: Thank you.

2 LORI STORY: Would you please state your name
3 and spell it for the record?

4 SHARON FOERSCHLER: Sure. Sharon Foerschler, S-H-A-
5 R-O-N, Foerschler, F-O-E-R-S-C-H-L-E-R.

6 LORI STORY: And, you've been previously
7 sworn to tell the truth, correct?

8 SHARON FOERSCHLER: I have, yes.

9 LORI STORY: All right. So, what is your
10 occupation, Ms. Foerschler?

11 SHARON FOERSCHLER: I'm a Civil Engineer and I'm the
12 Chief Construction Engineer for the Nevada Department of
13 Transportation.

14 LORI STORY: How long have you been in that
15 position?

16 SHARON FOERSCHLER: In my position, three and a half
17 years.

18 LORI STORY: What's the primary role of the
19 Construction Division?

20 SHARON FOERSCHLER: We are tasked with overseeing
21 and setting policy and program for the administration of our
22 Construction Program for the Department.

23 LORI STORY: For the entire Department.

24 SHARON FOERSCHLER: Yes.

25

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1 LORI STORY: So, it's all statewide
2 construction projects.

3 SHARON FOERSCHLER: That's correct.

4 LORI STORY: Are you the delegated appointing
5 authority for the Construction Division?

6 SHARON FOERSCHLER: I am.

7 LORI STORY: And so, you hire and fire NDOT
8 employees in that Division?

9 SHARON FOERSCHLER: Correct.

10 LORI STORY: Did you hire Mr. Bronder?

11 SHARON FOERSCHLER: Yes.

12 LORI STORY: Did you interview him first?

13 SHARON FOERSCHLER: Yes.

14 LORI STORY: And, where did Mr. Bronder come
15 from?

16 SHARON FOERSCHLER: He was a Resident Engineer out
17 in Elko when we hired him.

18 LORI STORY: And how long had he been in that
19 position?

20 SHARON FOERSCHLER: I would say between six and
21 seven months, somewhere in that range.

22 LORI STORY: And, was he a probationary
23 employee at that time?

24 SHARON FOERSCHLER: Yes.

25

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1 LORI STORY: Was this a change from Elko to
2 Carson City considered a lateral transfer?

3 SHARON FOERSCHLER: Yes.

4 LORI STORY: Was there any change in his
5 probationary status or length of probation based upon that
6 transfer?

7 SHARON FOERSCHLER: No.

8 LORI STORY: Was that fact brought to Mr.
9 Bronder's attention during the hiring process?

10 SHARON FOERSCHLER: Yes.

11 LORI STORY: How was it brought to his
12 attention?

13 SHARON FOERSCHLER: We had a discussion about it and
14 I believe he was fully aware that it was the same level
15 position, a Manager I, same pay grade and step.

16 LORI STORY: And so, he--was he aware that he
17 would have only the balance of his one year probationary
18 period to prove his performance to you in the Construction
19 Division?

20 SHARON FOERSCHLER: Yes, I believe that to be
21 correct.

22 LORI STORY: Was that part of your discussion
23 by any chance?

24 SHARON FOERSCHLER: I believe so. I don't exactly
25 recollect the conversation but I do believe we had it.

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1 LORI STORY: When you fired Mr. Bronder did
2 you speak to his previous supervisor before doing so?

3 SHARON FOERSCHLER: I did.

4 LORI STORY: Who did you speak to?

5 SHARON FOERSCHLER: Boyd Ratliff.

6 LORI STORY: And, what was the report you
7 received from Mr. Ratliff?

8 SHARON FOERSCHLER: It was positive.

9 LORI STORY: Okay. Did he go into any
10 specifics about Mr. Bronder's performance there?

11 SHARON FOERSCHLER: Not that I recall.

12 LORI STORY: Did you have an opportunity to
13 observe Mr. Bronder's work performance during this time at the
14 Construction Division?

15 SHARON FOERSCHLER: Yes.

16 LORI STORY: And, what was your impression of
17 his performance?

18 SHARON FOERSCHLER: Well, I had a discussion with
19 Mr. Bronder when he began work in our office of the
20 expectations I had of him in his role and how I wanted to see
21 him interact with his staff and what duties he was to perform.
22 I can say that I did not witness or see him actively engaged
23 in those duties as I had expected of him. In my opinion, I
24 made clear to him what my expectations were.

25

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1 LORI STORY: Did you have an opportunity to
2 coach him at all during the short period he was with you,
3 during the period he was with you about issues?

4 SHARON FOERSCHLER: Well, not specifically. You
5 know, when he first came into the office, we had a couple of
6 discussions. He had a supervisor over him that was one of my
7 assistant's. So, I delegated that responsibility down to his
8 manager. I would say, we probably had at least two, maybe
9 three conversations, Mr. Bronder and I when he came into our
10 office. But on a daily basis, interacting, giving him
11 direction, no I did not.

12 LORI STORY: Okay. Was Mr. Bronder assigned
13 to work on the construction manual rewrite?

14 SHARON FOERSCHLER: He was asked to join us as a
15 group. I looked at that as a learning experience for him. We
16 were revamping the whole construction manual. So, in order to
17 bring him up to speed on what some of our roles and
18 responsibilities and how we set the construction program, I
19 thought it would be a good experience for him to be involved
20 in the manual rewrite process.

21 LORI STORY: Was he--what part of his time was
22 he supposed to dedicated to that assignment?

23 SHARON FOERSCHLER: We met on Fridays. We had a
24 good chunk of Fridays starting at 9:00 AM, blocked off. We
25 would break for lunch and we would work typically until we

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1 were done, maybe 3:00 in the afternoon, give or take. It
2 depended on what area of the manual we were in and-

3 LORI STORY: Was he expected to work on the
4 manual rewrite at other times during his week?

5 SHARON FOERSCHLER: Not in my mind. I know he was
6 doing some grammatical checks outside of those meetings for
7 part of the manual, but how much time he spent on that I
8 can't-

9 LORI STORY: Was that something that was
10 assigned to him?

11 SHARON FOERSCHLER: Not that I recall.

12 LORI STORY: What other tasks was Bronder
13 charged with? What are his job responsibilities?

14 SHARON FOERSCHLER: So, he was brought in as the
15 Manager of the Constructability Section in our office. The
16 Constructability Section is comprised of four individuals that
17 are involved doing, during project development, reviewing the
18 plans and specifications. So, he was overseeing that group.

19 There's also an individual that is part of that
20 group but not so much on the constructability side but that
21 would perform post-construction reviews and do the scheduling
22 of construction projects oversight for the construction crews.
23 So, functionally, he was over those two areas in our office.

24 LORI STORY: Was a significantly different
25 job than he was doing in Elko.

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1 SHARON FOERSCHLER: You could say it was different
2 but there were also a lot of ties that were similar. So, his
3 job as a Resident Engineer in Elko would be taking those
4 project plans, contract plans, and watching or overseeing the
5 contractor perform the work in accordance with those contract
6 plans.

7 Constructability, their role was through the
8 development of those plans. So, in plan interpretation it
9 would be the same, basically.

10 LORI STORY: So, the time that he spent as
11 the Elko—in the Elko Manager position would in fact have
12 enhanced then, added to his skill set for the position in
13 Carson City.

14 SHARON FOERSCHLER: Yes, that was my expectation.

15 LORI STORY: Did Mr. Bronder get an
16 evaluation during his probationary period?

17 SHARON FOERSCHLER: At 11 months.

18 LORI STORY: Who wrote that evaluation?

19 SHARON FOERSCHLER: His immediate supervisor, my
20 assistant, Jeff Freeman.

21 LORI STORY: And, did you review that
22 evaluation?

23 SHARON FOERSCHLER: I did.

24 LORI STORY: Was it before or after Mr.
25 Bronder was given the evaluation?

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1 SHARON FOERSCHLER: It was after.

2 LORI STORY: And, did you have any concerns
3 about that particular course of action?

4 SHARON FOERSCHLER: I did. So, what happened--let me
5 back us up a little bit. What happened was, I was in Vegas
6 that day performing work. I had instructed his supervisor to
7 give him his 11-month evaluation because Mr. Bronder was going
8 on vacation and I wanted it in before he went on vacation, at
9 the 11-month and I had concerns about his performance.

10 And so, his supervisor had emailed me the
11 evaluation. I reviewed it. Provided feedback and when I sent
12 it back to my assistant, he stated to me that he had already
13 given it to Mr. Bronder for signature.

14 LORI STORY: Did you have any response to
15 that particular course of events?

16 SHARON FOERSCHLER: Indeed I did. I was very
17 unhappy.

18 LORI STORY: Would you look at--there's a
19 binder right there.

20 SHARON FOERSCHLER: Right here?

21 LORI STORY: Yeah. And, turn to Tab E.

22 SHARON FOERSCHLER: Okay.

23 LORI STORY: Do you rec--look through there
24 and see if you recognize the documents in that Exhibit.

25

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1 SHARON FOERSCHLER: Yes, this is the email that I
2 sent to my assistant, Jeff Freeman, when he had informed me
3 that he had already given the evaluation for signature to Mr.
4 Bronder.

5 LORI STORY: And you were upset, why? Why
6 were you upset?

7 SHARON FOERSCHLER: Because I wanted the evaluation
8 to clearly show to Mr. Bronder that he was not performing at a
9 satisfactory level and more of the functions of his job or job
10 elements than Mr. Freeman had rated him, below standard.

11 LORI STORY: Okay. So, turning to ER48, can
12 you tell us what that is?

13 SHARON FOERSCHLER: So, these are some points for
14 discussion on-when I knew that I was going to let-my decision
15 was made to let Mr. Bronder go. I made some points for
16 discussion when I sat down with Mr. Bronder to let him go.
17 And this is-these are the points that I came up with of why I
18 was unsatisfied with his performance.

19 LORI STORY: Did you discuss these points
20 with him during that conversation?

21 SHARON FOERSCHLER: I believe I did, yes.

22 LORI STORY: Is that why you prepared this
23 list?

24 SHARON FOERSCHLER: Yes. I had, honestly, not let
25 somebody go before and I took it very seriously. I spent a

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1 lot of time thinking about it. I knew that I needed to have
2 good reason and I didn't want to get flustered or you know,
3 not be able to convey to Mr. Bronder why I was letting him go.
4 So, these were points that I typed up just to keep me on task
5 when I had to let him go.

6 LORI STORY: Now, he was a probationary
7 employee, correct?

8 SHARON FOERSCHLER: Correct.

9 LORI STORY: And are you aware that
10 probationary employees can be released for any reason?

11 SHARON FOERSCHLER: Yes.

12 LORI STORY: As long as it's legal? Can you
13 explain to the Hearing Officer a little bit of each of these
14 points as to what about them concerned you about Mr. Bronder's
15 performance?

16 SHARON FOERSCHLER: Uh huh. So, I was—I thought I
17 was very clear with Mr. Bronder. I gave him a good background
18 of the dynamics that he was stepping into in our office and
19 what needed to happen with the sections that he was managing
20 to make the group cohesive enough.

21 So, you know, I worked with him, talked—when I say
22 worked with him, talked with him. Discussed with him how I
23 wanted to interact with Constructability, those four
24 individuals. The person involved with scheduling. I was very
25 specific on the post-construction reviews and that was handled

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1 by the person who does scheduling in our office, that they
2 needed a lot of work and you know, to start slowly, build a
3 little bit of relationship with that person, but I wanted to
4 see some improvement in that process.

5 LORI STORY: And, did you?

6 SHARON FOERSCHLER: I did not. I did not see any
7 interaction to be honest with you. I noticed that he seemed
8 to-going down to number two, did not seem to follow direction
9 like I would've expected.

10 So, we had a partnering conference in Reno and he
11 had asked how to accomplish his 40-hours in that week and I
12 said, you know, don't work it so that you're taking time off
13 at the end of the week, come to the conference, but there's
14 hours outside of that that I expect you to be in the office.
15 At the end of the week, he did exactly what I told him not to
16 do. I was not happy about that.

17 The construction manual rewrite. There were times
18 that, you know, he-he would come and go out of that, as he
19 pleased. Maybe as he pleased is too strong, too strong a
20 wording, but you know, he would come in and if it was time for
21 his lunch, he would get up and leave. If his-you know, he
22 came in at 6:30 instead of 7:00 that day, he would get up and
23 leave. I just-it didn't sit well with me. I thought, you
24 know, if you're coming in here, you're a probationary

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1 employee, we hope to see your best performance, you know, in
2 those months. That's not what I was seeing.

3 One day in particular, addressing C2C, I'd asked him
4 to sit down. We had a staff member that was retiring. So, we
5 had asked him to step in and help us with their job duties,
6 which was the consultant program until we got that position
7 hired. Same pay grade, same level of staff, or the same level
8 as he was and asked him to sit down that morning and you know,
9 learn some of what she was doing. After we had asked him to
10 do so, he had not and he just disappeared for an hour and a
11 half, nobody knew where he was.

12 That seemed to be kind of consistent. There were
13 often times that I didn't know where he was. And neither did
14 staff, nobody knew what he was doing, but he would not be at
15 his desk.

16 And you know, addressing number three, you know, at
17 a manager level with his level of experience, I expected above
18 standard performance and more effort put into and you know,
19 integrating within the Construction Office. It just didn't
20 happen.

21 LORI STORY: And, he did receive an
22 evaluation, it was overall meets standards. Not exceeds
23 standards.

24 SHARON FOERSCHLER: Uh huh. No, did not exceed
25 standards.

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1 LORI STORY: And, were there portions of it
2 that were below standard?

3 SHARON FOERSCHLER: Two.

4 LORI STORY: Turning to the next section, the
5 next two documents, what are these documents?

6 SHARON FOERSCHLER: So, are you looking at the
7 timeline?

8 LORI STORY: Yeah, the timeline.

9 SHARON FOERSCHLER: I put that together. I went
10 through John's, Mr. Bronder's timesheets and put together what
11 hours he was working. I kind of wanted to have something in
12 front of me that could show me what he was doing--and this I
13 put together after I let him go and after this--

14 LORI STORY: This was in preparation for
15 this?

16 SHARON FOERSCHLER: --this was--right.

17 LORI STORY: Okay.

18 SHARON FOERSCHLER: To kind of get an idea in my
19 mind of, you know, he says he was tasked with so much time on
20 the construction manual rewrite and I just didn't believe that
21 to be accurate. So, this was just something that I put
22 together based on our schedule for the rewrite and his
23 timesheets, to show that they're indeed--

24 LORI STORY: So, this was kind of an after
25 the fact attempt--

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1 SHARON FOERSCHLER: It was.

2 LORI STORY: -to justify or document the
3 reason for probationary release?

4 SHARON FOERSCHLER: No, not at all. This was just
5 to show that the statements that he made, that he was tasked
6 with spending so much time on the construction manual rewrite
7 was really not accurate.

8 LORI STORY: What were his assigned work
9 hours?

10 SHARON FOERSCHLER: 7:00 to 4:00.

11 LORI STORY: And, when he worked different
12 hours, did he obtain prior approval for those different hours,
13 like 6:30 to 3:00, 6:30 to 3:00, 6:30 to 3:00?

14 SHARON FOERSCHLER: I don't believe so, but he
15 would've done that with his supervisor, not with me.

16 LORI STORY: Okay. Did you discuss releasing
17 Mr. Bronder from probation with anybody else?

18 SHARON FOERSCHLER: Yes. Both of my assistants.
19 One who was a supervisor and the other being Stephen Lani.

20 LORI STORY: And, during those discussions,
21 did those two gentlemen have opinions different than yours or?

22 SHARON FOERSCHLER: Yes. We had lengthy
23 conversations about it and I expressed my concerns. His
24 direct supervisor had similar concerns. Mr. Lani always gives
25 everyone the benefit of the doubt. So, we went round robin a

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1 couple of times on it. This wasn't something that I just
2 decided to do and did it, you know.

3 LORI STORY: Did you speak to Mr. Ratliff
4 before you let him go?

5 SHARON FOERSCHLER: I did.

6 LORI STORY: And, what did Mr. Ratliff tell
7 you at that point?

8 SHARON FOERSCHLER: Well, I first contacted him to-
9 to find out if he would take Mr. Bronder back at the RE
10 position that he came from. Because if that was the case,
11 then when I let Mr. Bronder go, I could let him know, you
12 know, if you want to go back to Elko, Mr. Ratliff said that he
13 would take you back. But, Mr. Ratliff said no, he wasn't
14 interested in taking him back.

15 LORI STORY: Now, as a probationary employee,
16 in your knowledge, is there right to revert back to a position
17 like that?

18 SHARON FOERSCHLER: I can't answer that, I don't
19 know.

20 LORI STORY: Did you--were you aware of a
21 conversation that Mr. Bronder had with Stephen Lani where he
22 raised questions or concerns about the costs of consultant
23 contracts?

24 SHARON FOERSCHLER: Yes, Mr. Lani mentioned it to
25 me.

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1 LORI STORY: And, when did Mr. Lani mention
2 that?

3 SHARON FOERSCHLER: Gosh, I don't remember the date.

4 LORI STORY: Was it during the conversation
5 about letting him go from probation?

6 SHARON FOERSCHLER: No. It was long before that. I
7 think it was probably—I think Mr. Bronder went to Mr. Lani
8 after the Transportation Board Meeting. So, that would've
9 been sometime in April, I believe.

10 LORI STORY: So, Mr. Lani spoke to you close
11 to the time when he had the meeting with Bronder?

12 SHARON FOERSCHLER: That was my understanding at the
13 time, yes.

14 LORI STORY: And, did Mr. Bronder's questions
15 or concern raise any red flags for you?

16 SHARON FOERSCHLER: Not at all. I think I even said
17 to Steve, you know, it looks like an opportunity for a
18 learning experience. We have same concerns, you know, people
19 look at hourly rates and they think, my gosh, you're paying
20 that consultant that much money, that's kind of ridiculous.
21 So, it's not anything out of the ordinary for anybody stepping
22 in, looking at the rates for consultants.

23 LORI STORY: Did you feel like he was making
24 a whistleblower report?

25 SHARON FOERSCHLER: Not in the least.

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1 LORI STORY: Did you feel like he was
2 reporting something that was improper or illegal?

3 SHARON FOERSCHLER: Not even close, no.

4 LORI STORY: Did you think he was reporting a
5 gross waste of public money?

6 SHARON FOERSCHLER: No.

7 LORI STORY: Did you take any steps--was this
8 question any consideration on your part, was his questions to
9 Lani about these contracts, this report he made, taken into
10 consideration at all in your decision to release him from
11 probation?

12 SHARON FOERSCHLER: Not at all.

13 LORI STORY: Did you--there was no ability for
14 you to extend Mr. Bronder's probation?

15 SHARON FOERSCHLER: No.

16 LORI STORY: But you had already discussed
17 that with him when he decided to take the position?

18 SHARON FOERSCHLER: I believe, yes. There were
19 discussions that were taking him at about the seven month mark
20 so there would be four months left of his probationary period
21 in our office.

22 LORI STORY: At the time Stephen Lani told
23 you about this conversation, did you take any retaliatory
24 against Mr. Bronder?

25 SHARON FOERSCHLER: Not at all, no.

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1 LORI STORY: Did you suggest anyone else take
2 any retaliatory action?

3 SHARON FOERSCHLER: Absolutely not.

4 LORI STORY: Since that time, have you become
5 aware of Mr. Bronder meeting with Mr. Malfabon, or Mr. Kaiser?

6 SHARON FOERSCHLER: Yes, I'm aware of that meeting.

7 LORI STORY: And, how did you become aware of
8 that?

9 SHARON FOERSCHLER: I believe Mr. Kaiser told me
10 that he was coming in to meet with Rudy and him.

11 LORI STORY: And you knew it was Mr. Bronder
12 that was meeting?

13 SHARON FOERSCHLER: Yes.

14 LORI STORY: Did you convey anything, have
15 anything to say about that potential meeting before it
16 occurred?

17 SHARON FOERSCHLER: Not that I can recollect. Rudy--
18 I'm sorry, Mr. Kaiser may have asked me for the range of what
19 we pay consultants, I think there was--there might have been
20 something along that line, but that was it.

21 LORI STORY: Was that after the meeting or
22 prior to?

23 SHARON FOERSCHLER: Gosh, I don't remember. I want
24 to say it was prior to.

25

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1 LORI STORY: If you look at Exhibit C in that
2 binder.

3 SHARON FOERSCHLER: Okay.

4 LORI STORY: I'll see if you recognize, on
5 Page 35 there, did you receive this email from Mr. Kaiser?

6 SHARON FOERSCHLER: Well it originally came from
7 Steve to myself and Mr. Kaiser. So, yes.

8 LORI STORY: Can you-the bot-

9 SHARON FOERSCHLER: The top one?

10 LORI STORY: The bottom one. The bottom-the
11 very last on Page 36.

12 SHARON FOERSCHLER: Oh, I'm sorry.

13 LORI STORY: Do you recall that at all?

14 SHARON FOERSCHLER: I do now that I'm reading it,
15 yes.

16 LORI STORY: And, at this time, did you know
17 it was Mr. Bronder he was talking about?

18 SHARON FOERSCHLER: I did not.

19 LORI STORY: Did you respond to that email?

20 SHARON FOERSCHLER: No. No, Steve did, so I didn't
21 need to.

22 LORI STORY: And after the meeting, did you
23 hear anything from Mr. Malfabon or from Mr. Kaiser indicating
24 that they felt like Mr. Bronder's questions were
25 inappropriate?

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1 SHARON FOERSCHLER: No.

2 LORI STORY: Did they indicate that they felt
3 like he was trying to whistle blow?

4 SHARON FOERSCHLER: Not at all, no.

5 LORI STORY: Did Mr. Malfabon or Mr. Kaiser
6 give you any kind of direction or any indication that they
7 felt that there should be some prohibition for Mr. Bronder
8 coming back to work for NDOT because of these questions?

9 SHARON FOERSCHLER: No.

10 LORI STORY: To your knowledge, did anyone at
11 NDOT take any retaliatory action against Mr. Bronder?

12 SHARON FOERSCHLER: No.

13 LORI STORY: Has Mr. Bronder been denied
14 rehiring because of his reports?

15 SHARON FOERSCHLER: Not that I'm aware of.

16 LORI STORY: If Mr. Bronder came back and
17 applied for another job, if he was the best candidate for that
18 job, would he get it from you?

19 SHARON FOERSCHLER: Based on the experience that
20 I've had, I don't know that I could take him back, no.

21 LORI STORY: Do you have—as an appointing
22 authority, if you interview the candidates and there's one
23 that's better than the other but you're not happy with either,
24 are you able to decide not to hire someone?

25 SHARON FOERSCHLER: Yes.

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1 LORI STORY: So, that would not be an
2 inappropriate decision.

3 SHARON FOERSCHLER: Not at all.

4 LORI STORY: And, would it be because he had
5 raised questions with you about the contracting costs?

6 SHARON FOERSCHLER: No.

7 LORI STORY: You don't--do you have any
8 control over District III hiring or firing up there?

9 SHARON FOERSCHLER: None.

10 LORI STORY: Any of the other Divisions in
11 NDOT?

12 SHARON FOERSCHLER: No.

13 LORI STORY: Did you contact anyone at HR or
14 otherwise to direct them to remove Mr. Bronder from an
15 interview list?

16 SHARON FOERSCHLER: No.

17 LORI STORY: Do you know of anyone who did?

18 SHARON FOERSCHLER: No.

19 LORI STORY: I don't have any further
20 questions.

21 HEARING OFFICER: Mr. Donaldson?

22 THOMAS DONALDSON: Thank you. Ms. Foerschler, my
23 name is Tom Donaldson, representing Mr. Bronder today. Let's
24 start, I guess, do you still have Exhibit C open?

25 SHARON FOERSCHLER: Yes.

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1 THOMAS DONALDSON: Okay. So, you testified that
2 you did not reply to Mr. Kaiser's email because Mr. Lanj
3 already had, correct?

4 SHARON FOERSCHLER: Yes.

5 THOMAS DONALDSON: Did you talk to Mr. Kaiser
6 before the meeting with the Director?

7 SHARON FOERSCHLER: No. Well, I talk to him every
8 day, he's my supervisor--

9 THOMAS DONALDSON: Regarding the meeting or Mr.
10 Bronder.

11 SHARON FOERSCHLER: No.

12 THOMAS DONALDSON: But you also testified you knew
13 the meeting was with Mr. Bronder.

14 LORI STORY: No.

15 SHARON FOERSCHLER: No.

16 LORI STORY: That's not what she testified.

17 THOMAS DONALDSON: I believe testimony was, you
18 found--you were aware of Mr. Bronder's meeting with Mr. Kaiser.

19 LORI STORY: Then she revised her testimony.

20 SHARON FOERSCHLER: After the fact, yes.

21 THOMAS DONALDSON: After the fact. Are you aware
22 that Mr. Kaiser told Mr. Bronder that according to you, Mr.
23 Bronder was not a good fit in the Construction Division?

24 SHARON FOERSCHLER: Yes.

25 THOMAS DONALDSON: At that meeting?

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1 SHARON FOERSCHLER: No. After the fact, yes.

2 THOMAS DONALDSON: Did you make that statement to
3 Mr. Kaiser?

4 SHARON FOERSCHLER: Probably yes, uh huh.

5 THOMAS DONALDSON: You're not sure?

6 SHARON FOERSCHLER: I'm not sure.

7 THOMAS DONALDSON: But it wasn't between the email
8 on July 11 and the meeting on July 15?

9 SHARON FOERSCHLER: No, because--well, it could've
10 been, but not in relation to meeting that Mr. Bronder had with
11 Mr. Kaiser and Rudy. So, I did talk to Mr. Kaiser, when I was
12 letting him go. I did give him the reasons why I was letting
13 him go.

14 THOMAS DONALDSON: You didn't say that to Mr.
15 Bronder though at that meeting did you?

16 SHARON FOERSCHLER: That I had talked to Mr. Kaiser?

17 THOMAS DONALDSON: No, that Mr. Bronder was not a
18 good fit in the Construction Division.

19 SHARON FOERSCHLER: I don't think so, no.

20 THOMAS DONALDSON: It's not in your bullet points
21 anywhere.

22 SHARON FOERSCHLER: No.

23 THOMAS DONALDSON: What about Exhibit E, the email
24 that you sent to Mr. Freeman, references an email that you
25

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1 supposedly received from him earlier that day, but it's not
2 here. Do you have a copy of that?

3 SHARON FOERSCHLER: I do not.

4 THOMAS DONALDSON: And, finally, Exhibit A, if you
5 flip back to ER019, this is Mr. Bronder's performance
6 evaluation from April 24, 2017.

7 SHARON FOERSCHLER: Okay.

8 THOMAS DONALDSON: In Section 13, you checked agree
9 with the evaluation, is that accurate?

10 SHARON FOERSCHLER: That is accurate.

11 THOMAS DONALDSON: And you signed the evaluation on
12 behalf of the appointing authority.

13 SHARON FOERSCHLER: I am the appointing authority.

14 THOMAS DONALDSON: As the appointing authority.

15 SHARON FOERSCHLER: Yes.

16 THOMAS DONALDSON: That's all I have.

17 LORI STORY: If you agreed with the
18 evaluation, why did you send Mr. Freeman the email that you
19 did?

20 SHARON FOERSCHLER: Because I was not happy that he
21 did not take my comments and reflect those in the evaluation
22 prior to giving it to Mr. Bronder for signature.

23 LORI STORY: And, what comments were those?
24 Were they the ones in the evaluation that you wrote? If you
25 look back at 19. Did you offer some comments there?

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1 SHARON FOERSCHLER: Yes. So, for instance, in
2 managing the Division's scheduling program, I would've given
3 him a 1. On supervising--on Job Element 1, Supervise and Train
4 Constructability and Project Scheduling, I would've given him
5 a 1. I don't recall exactly what my comments were to Jeff
6 when I reviewed this.

7 LORI STORY: Did you write comments in
8 Section 13 above your signature?

9 SHARON FOERSCHLER: Yes.

10 LORI STORY: What do those say?

11 SHARON FOERSCHLER: John needs to work on
12 integrating with Constructability and Mark Capriotti. Need to
13 see improvements in post-construction reviews.

14 LORI STORY: And, were those comments that
15 would've been incorporated in the evaluation--

16 SHARON FOERSCHLER: Absolutely.

17 LORI STORY: --if you'd have reviewed it
18 before?

19 SHARON FOERSCHLER: Yes.

20 LORI STORY: I don't have anything further.

21 THOMAS DONALDSON: No follow-up.

22 HEARING OFFICER: What is the range--as the
23 appointing authority, what is the range of your authority?
24 What portions of NDOT do you have control over as the
25 appointing authority?

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1 SHARON FOERSCHLER: The Construction Division.

2 HEARING OFFICER: That's separate from Districts?

3 SHARON FOERSCHLER: It is.

4 HEARING OFFICER: And, who are the appointing
5 authorities, if you will, in the Districts?

6 SHARON FOERSCHLER: Those would be the District
7 Engineers.

8 HEARING OFFICER: And that's how they're—that's
9 their job title, District Engineer?

10 SHARON FOERSCHLER: That's correct.

11 HEARING OFFICER: So, in Mr. Ratliff would be
12 District Engineer?

13 SHARON FOERSCHLER: He is now. At the time he was
14 Assistant District Engineer.

15 HEARING OFFICER: So, at the time you talked to
16 him about having Mr.—the possibility of Mr. Bronder coming
17 back, he was not the appointing authority?

18 SHARON FOERSCHLER: No, he was his immediate
19 supervisor. Mr. Bronder's immediate supervisor.

20 HEARING OFFICER: But his—his authority is
21 different than that of the appointing authority.

22 SHARON FOERSCHLER: Correct.

23 HEARING OFFICER: In fact, it sounds like it might
24 be beyond his authority to make a decision.

25

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1 SHARON FOERSCHLER: I would clarify that by saying
2 it would be the recommendation of Mr. Ratliff to the
3 appointing authority and then the appointing authority would
4 make the decision. If Mr. Ratliff did not want to make that
5 recommendation, then it would end there.

6 HEARING OFFICER: You got me a little confused--

7 SHARON FOERSCHLER: Okay, so--

8 HEARING OFFICER: A couple of negatives, I didn't
9 know if it would end there or if he would not want to make the
10 recommendation.

11 SHARON FOERSCHLER: So, the appointing authority,
12 for instance, in my case, I would not make the decision for
13 staff that worked under some of my managers or supervisors in
14 my Division without that manager or supervisor agreeing with
15 the hire, or to hire somebody. And so, I would assume it
16 would be the same at Districts. So, Boyd was the direct
17 supervisor of Mr. Bronder. If he wanted to take him back, at
18 the Manager I level at District, then he would take that
19 recommendation to the appointing authority and say, I want to
20 bring him back. It would be unrealistic to think the
21 appointing authority would just make that decision without Mr.
22 Ratliff's recommendation.

23 HEARING OFFICER: Did you know who the appointing
24 authority was in District III?

25

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1 SHARON FOERSCHLER: I don't recall if Mr. Kevin Lee
2 had retired or not yet. The District Engineer was in the
3 process of retiring and I don't—I don't recall if he had or
4 not. It could've been the position was vacant at the time. I
5 don't recall.

6 HEARING OFFICER: Why wouldn't you call the
7 appointing authority and wouldn't it be the appointing
8 authority's decision to ask his staff and his supervisors?

9 SHARON FOERSCHLER: That would not be—that's not the
10 organization way that we decide on who—let me see how to say
11 this. That would not be the course of action I would ever
12 take. I would go to the person's immediate supervisor to see
13 if they wanted that person, that position/person back in that
14 position. I wouldn't go to the appointing authority, because
15 the appointing authority would then go to the supervisor and
16 say, do you want this person back.

17 HEARING OFFICER: Well, in the transfer that Mr.
18 Bronder had from Elko to Carson City, how did that actually
19 take place then? Who made the initial review in Carson City
20 and how did that person get notice that there was an
21 application to transfer?

22 SHARON FOERSCHLER: So, we had a job announcement
23 out through our Human Resources Division. Mr. Bronder applied
24 for that position. We did not just take him as a lateral. We
25 interviewed him along with other candidates.

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1 HEARING OFFICER: I understand you're saying "we",
2 but I'm--if you remember, we were just talking about, it isn't--
3 you were suggesting that it isn't the way you operate, in
4 terms of dealing with appointing authority to appointing
5 authority, but you would be more comfortable with having the
6 immediate supervisor of that employee involved in the process,
7 almost initially.

8 SHARON FOERSCHLER: Uh huh.

9 HEARING OFFICER: So, my question, in terms of
10 coming from Elko to Carson City, when did you participate in
11 the process?

12 SHARON FOERSCHLER: I sat on the interviews, myself
13 and my two assistants.

14 HEARING OFFICER: Those were the initial
15 interviews.

16 SHARON FOERSCHLER: Yes.

17 HEARING OFFICER: So, he was the appointing
18 authority, initially participated along with the person who
19 would be his immediate supervisor?

20 SHARON FOERSCHLER: Correct.

21 HEARING OFFICER: As well as Steven Lani, who was
22 not the immediate supervisor.

23 SHARON FOERSCHLER: Correct, both my assistants.

24 HEARING OFFICER: So, that would've been Jeff,
25 Steve and you.

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1 SHARON FOERSCHLER: Correct. And that's standard in
2 my Division at the Manager I level, whenever we're
3 interviewing for Managers. I also sit in on those interviews
4 because it is an upper management position.

5 HEARING OFFICER: I got that, but you kind of see
6 where I'm trying to get my head around when there is an
7 employee in your responsibility that your no longer satisfied
8 with in terms of retention. You want to terminate the
9 probationary status. You made the effort, apparently, to
10 determine whether or not a transfer back to a former job,
11 which he held for many months prior to the months that he was
12 in Carson City, was available.

13 SHARON FOERSCHLER: Uh huh.

14 HEARING OFFICER: But you didn't talk to the
15 appointing authority, you talked to an immediate supervisor.

16 SHARON FOERSCHLER: Correct.

17 HEARING OFFICER: What did the immediate
18 supervisor say in Carson-in that connection, coming-the
19 possibility of coming from Carson to Elko, returning.

20 SHARON FOERSCHLER: He said he did not want him
21 back.

22 HEARING OFFICER: What did he say?

23 SHARON FOERSCHLER: "I don't want him back".

24 HEARING OFFICER: Those were his specific words?

25 SHARON FOERSCHLER: Uh huh.

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1 HEARING OFFICER: Did you ask why or did he give
2 you reasons why?

3 SHARON FOERSCHLER: No, we did not get into that.
4 [pause] I was doing it, honestly as more of a courtesy for
5 Mr. Bronder. So, when I let him go, if he had the ability to
6 go back to his previous job, I could let him know that.

7 HEARING OFFICER: That's also generally a function
8 of how things work. Very frequently, certainly if there's a
9 permanent employee who is moving into a probationary status
10 and coming back.

11 SHARON FOERSCHLER: Well, there's a difference
12 between permanent and-

13 HEARING OFFICER: I got that. I understand that.

14 SHARON FOERSCHLER: Okay.

15 HEARING OFFICER: But I'm saying, there are some
16 norms, when you have state employment because it's not just
17 statutory. There's also other dimensions to, protections for
18 state employees.

19 SHARON FOERSCHLER: Uh huh.

20 HEARING OFFICER: We've gone through a portion of
21 this earlier in these proceedings, as you may or may not be
22 aware. So, I'm just trying to get my head around, so I get a
23 better understanding of what was going on.

24 Now, let's see. Your-I didn't tag it. The-what's
25 the Exhibit where you had your list of-

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1 THOMAS DONALDSON: E, as in Edward.

2 HEARING OFFICER: Next one.

3 THOMAS DONALDSON: Page 2.

4 HEARING OFFICER: There it is. This was prepared
5 by you prior to the meeting with Mr. Bronder and prior to May
6 5?

7 SHARON FOERSCHLER: Yes.

8 HEARING OFFICER: Okay. When was it prepared?

9 SHARON FOERSCHLER: I would have to look at when I
10 generated it, it was either May 4th or 5th.

11 HEARING OFFICER: Okay. This was something
12 prepared for your own use and was not given to Mr.—this
13 document, that you've written out, was not given to Mr.
14 Bronder.

15 SHARON FOERSCHLER: That's correct.

16 HEARING OFFICER: But he was orally informed?

17 SHARON FOERSCHLER: Yes.

18 HEARING OFFICER: Okay. Item #1 is a failure to
19 interact with employees he was responsible for. How did you
20 determine that?

21 SHARON FOERSCHLER: Observing his interaction with
22 the staff or lack thereof.

23 HEARING OFFICER: Well, did you [inaudible] out,
24 you're saying, failure to interact with employees he's
25 responsible for. How did—what was the failure to interact and

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1 how did you determine that? What are the facts that surround
2 that?

3 SHARON FOERSCHLER: I spoke with the supervisor in
4 Constructability to see what their--his perception was of Mr.
5 Bronder's management. I observed the lack of any interaction
6 between Mr. Bronder and that staff.

7 HEARING OFFICER: I guess that begs a little bit
8 of a question. I don't know the physical layout of your
9 offices, so when you say you observed, how did you observe?
10 Did you actually see him? Is your office and Mr. Bronder's
11 area of activity or office somewhere visible to you that you
12 would see him or interact with him in some way every day?

13 SHARON FOERSCHLER: Yes. There is a hallway, if you
14 will, in between where his office sat and the cubicles of his
15 staff that I walk by numerous times a day because my office is
16 at the end of that walk.

17 HEARING OFFICER: So, you'd be walking by both his
18 office and his colleagues' office.

19 SHARON FOERSCHLER: Yes.

20 HEARING OFFICER: The crew, constructability crew.

21 SHARON FOERSCHLER: Uh huh.

22 HEARING OFFICER: All right. And you didn't see
23 him in there?

24 SHARON FOERSCHLER: Uh-uh.
25

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1 HEARING OFFICER: Is that where he was supposed to
2 be?

3 SHARON FOERSCHLER: Well, that's the staff he's
4 tasked to manage and interact with.

5 HEARING OFFICER: All right.

6 SHARON FOERSCHLER: Yes.

7 HEARING OFFICER: But how do you know because when
8 you walked by, you didn't see him there, what--there were times
9 where you weren't walking by, he could've been there.

10 SHARON FOERSCHLER: That's true.

11 HEARING OFFICER: All right. So, to what extent,
12 to the best of your recollection, to make these determinations
13 that he failed to interact with that staff. I mean, you say--
14 did you walk down the hallway every 10 minutes or--or, how did
15 you make that determination?

16 SHARON FOERSCHLER: Well, I had three plus months to
17 observe what was going on. I can say there were numerous
18 occasions every day that he wasn't even in the office. I
19 don't know where he was or what he was doing.

20 HEARING OFFICER: Okay. Is it your--is your view
21 mainly because of this failure to interact principally because
22 of the information given to you by his immediate supervisor?

23 SHARON FOERSCHLER: It played a part in it. I
24 wouldn't say that was the only factor, no.

25

000225

1 HEARING OFFICER: So, the larger factor on that
2 was that, of your own personal observation.

3 SHARON FOERSCHLER: And, my discussions with Stephen
4 and Jeff.

5 HEARING OFFICER: Well, Jeff was his immediate
6 supervisor.

7 SHARON FOERSCHLER: Correct.

8 HEARING OFFICER: Stephen was not.

9 SHARON FOERSCHLER: Correct. The way our office
10 functions though is staff pretty much work for both
11 assistants. Maybe not from an organizational chart
12 perspective and direct line of supervision, but our functions
13 in the office are so varied and across the state, if you will,
14 in program management that all of my staff know they pretty
15 much work for both my assistants and myself. We're a very
16 integrated office.

17 HEARING OFFICER: How large is the office?

18 SHARON FOERSCHLER: There's--oversee 29 people. I
19 would say there's 22 in our office. We have some staff that
20 are positioned remotely throughout the State.

21 HEARING OFFICER: And, at the time, Mr. Bronder
22 was one of the 22.

23 SHARON FOERSCHLER: Yes. Give or take on that
24 number with vacancies and whatnot.

25

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1 HEARING OFFICER: All right. All right, no, I'm
2 just trying to get a sense of size. Because when somebody
3 says, you didn't interact, obvious question is, how do you
4 know that?

5 SHARON FOERSCHLER: Right.

6 HEARING OFFICER: You rely on your supervisors.

7 SHARON FOERSCHLER: Uh huh.

8 HEARING OFFICER: You're saying that you have a
9 somewhat integrated staff in which everybody kind of tight
10 knit, works together, crossover activities. Scheduling.
11 Responsible for scheduling. Now, how would he fail to
12 interact with employees responsible for scheduling? Is that
13 different than the constructability people?

14 SHARON FOERSCHLER: It's a different staff member,
15 yes.

16 HEARING OFFICER: Where are they located?

17 SHARON FOERSCHLER: Their office is directly
18 diagonal from mine. So, he's two-three offices down from
19 where Mr. Bronder sat.

20 HEARING OFFICER: Who's in charge of the
21 scheduling people?

22 SHARON FOERSCHLER: Mr. Bronder was.

23 HEARING OFFICER: Okay. And, how did I guess the
24 same question, how did you get to know from your own
25 experience that he was not interacting with those scheduling

000227

1 people. Did they tell you that he wasn't, that they never see
2 him or what?

3 SHARON FOERSCHLER: It was one person. We have one
4 person over scheduling and that person also oversees the post-
5 construction reviews. I had talked with Mr. Bronder about the
6 importance of having some revisions and refinement to that
7 review and report, and per Mr. Bronder, he had not done that.

8 HEARING OFFICER: Now that's Mr. Bronder's
9 statements.

10 SHARON FOERSCHLER: Yes, he had not-

11 HEARING OFFICER: Did you talk to the scheduling
12 person about his failure to interact?

13 SHARON FOERSCHLER: I did not. I did not, no.

14 HEARING OFFICER: Okay. And, not actively become
15 involved in the office, not [inaudible] additional work
16 assignments. This is a new employee.

17 SHARON FOERSCHLER: Uh huh.

18 HEARING OFFICER: And, as you've said, Mr. Lani
19 generally is willing to give people a bit of the break, I
20 guess.

21 SHARON FOERSCHLER: Uh huh.

22 HEARING OFFICER: More broadly. Your expectation
23 was, as somebody who is new to the office, with broader
24 responsibilities than previously experienced in Elko would
25

000228

1 seek out, should seek out additional work activities? And if
2 so, what would those be?

3 SHARON FOERSCHLER: Well, in reference to that, I
4 was speaking about the consultant program that we were asking
5 him to step in and oversee until we got that manager hired.
6 He did not take any initiative to engage in that process at
7 all. Maybe at all is a little bit strong, but he—I expected
8 him to sit down with the person who was retiring, you know,
9 learn about how we procure consultants, get himself immersed
10 in that job function and it wasn't until I actually directed
11 him to that he took any action on that.

12 HEARING OFFICER: The consultant, is the
13 consultant in the Constructability Scheduling section or is in
14 the procurement section, I'm not sure I understand.

15 SHARON FOERSCHLER: It's a separate section. So, we
16 had a staff member retiring, and until we could rehire that
17 position, we needed some—

18 HEARING OFFICER: You needed a filler.

19 SHARON FOERSCHLER: We needed some extra assistance
20 managing that program, and since it's at the same job level as
21 Mr. Bronder, it's natural to have that position assist us in
22 that covering those activities.

23 HEARING OFFICER: Was that part of your
24 conversation when you were interviewing Mr. Bronder and you
25 reviewed with him what the expectations were?

000229

1 SHARON FOERSCHLER: Not in the interview. I don't
2 recall if I talked with him immediately when he came into our
3 office or not, but it was definitely a conversation that took
4 place with Mr. Bronder when he was in our office.

5 HEARING OFFICER: Okay. Do you remember when? Is
6 it a specific direction that you gave?

7 SHARON FOERSCHLER: I don't recall if I gave it or
8 if Jeff gave it, but it was definitely specific direction that
9 we want you to step in and help us with that program until we
10 get someone hired.

11 HEARING OFFICER: Okay. When was--let's see, let's
12 take the three month period. What part of the three month
13 period was that consultant program of concern? When was the
14 retirement anticipated and when was the notice of pending
15 retirement given?

16 SHARON FOERSCHLER: She retired in May and we knew
17 January or February. So, we knew before we hired him that she
18 was retiring.

19 HEARING OFFICER: And you knew that then, I
20 suppose, at that time, you're going to have to make plans for
21 filling that position or was that position not going to be
22 filled?

23 SHARON FOERSCHLER: No, it was going to be filled.
24 It was our expectation that we would have someone in that
25 position prior to her retirement. We would have overlap.

000230

1 HEARING OFFICER: Okay. Would that be an existing
2 employee or a new hire?

3 SHARON FOERSCHLER: It would've been a new hire.

4 HEARING OFFICER: Okay. If you knew in January,
5 did you have that job posted?

6 SHARON FOERSCHLER: We worked hard to get it posted
7 and somebody hired and in that position prior to her leaving
8 and it didn't happen.

9 HEARING OFFICER: It didn't happen.

10 SHARON FOERSCHLER: It did not happen.

11 HEARING OFFICER: Okay. And that's why the
12 concern was, for Mr. Bronder to be more assistant in that
13 regard in that program.

14 SHARON FOERSCHLER: Yes.

15 HEARING OFFICER: Okay. I'm not exactly sure from
16 what you've generated by way of timeline on the next pages, 49
17 about--and your testimony about Mr. Bronder's failure to
18 participate in the construction manual rewrite project.

19 SHARON FOERSCHLER: So, I put this together
20 basically for myself, so I could see if, you know, prove to
21 myself that he was inaccurate and his level of responsibility
22 and amount of time that he spent and his complaint or motion
23 that he was tasked with all these hours on the construction
24 manual rewrite. So, that's why I generated it.

25

000231

1 HEARING OFFICER: Okay. I guess I'm confused. I
2 see him or at least I understand the record up to date as
3 having been--these are Friday activities.

4 SHARON FOERSCHLER: Uh huh.

5 HEARING OFFICER: Every Friday of every week.

6 SHARON FOERSCHLER: Well, you can see it was--

7 HEARING OFFICER: No, but I'm saying, was that--

8 SHARON FOERSCHLER: Yeah.

9 HEARING OFFICER: I mean, some of the testimony
10 has suggested, we meet every Friday.

11 SHARON FOERSCHLER: Yes.

12 HEARING OFFICER: We meet essentially all day
13 Friday, up until maybe 3:00 PM. 2:00 or 3:00 PM.

14 SHARON FOERSCHLER: Correct.

15 HEARING OFFICER: And you said, break for lunch.

16 SHARON FOERSCHLER: Right.

17 HEARING OFFICER: Okay. And, understand your
18 testimony to be that, well he didn't participate every day.
19 Every Friday.

20 SHARON FOERSCHLER: Well, as you can see, there
21 were--his first two weeks, February 17th and 24th, March 3rd,
22 March 10th, March 17th he was out sick and March 24th we were
23 done.

24 HEARING OFFICER: Well, if somebody's on sick
25 leave, why is that a problem?

000232

1 SHARON FOERSCHLER: It's not.

2 HEARING OFFICER: Okay. So, there really what-how
3 many days in which he didn't participate?

4 SHARON FOERSCHLER: He participated in 1, 2, 3, 4, 5
5 days.

6 HEARING OFFICER: And, he should've participated
7 in how many?

8 SHARON FOERSCHLER: Six.

9 HEARING OFFICER: Well, one of those days was sick
10 leave.

11 SHARON FOERSCHLER: Right, there were only six
12 opportunities for him to participate.

13 HEARING OFFICER: And he participated in 5 of 6
14 and the 6th one that he didn't participate or the one that he
15 didn't participate, was on sick leave.

16 SHARON FOERSCHLER: Correct.

17 HEARING OFFICER: All right. Why do you think
18 that was a problem?

19 SHARON FOERSCHLER: I didn't say it was a problem.
20 What I--the only thing I was trying to show in what I put
21 together in the spreadsheet was that Mr. Bronder made
22 statements in his motion that he was tasked with the
23 construction manual rewrite.

24

25

000233

1 HEARING OFFICER: I understand that, but you also
2 indicate on Page 48 that he did not participate in the
3 Construction Manual Rewrite Project as assigned.

4 SHARON FOERSCHLER: Okay.

5 HEARING OFFICER: And we have six times.

6 SHARON FOERSCHLER: Yes.

7 HEARING OFFICER: Five of which he participates
8 in, one of the six he's on sick leave.

9 SHARON FOERSCHLER: Correct.

10 HEARING OFFICER: So, I'm trying to figure out
11 what--what is that issue?

12 SHARON FOERSCHLER: The sick leave is not an issue.
13 The point I was trying--

14 HEARING OFFICER: No, no, no, what is to be, on
15 Page 48, which says, the inability to follow direction.

16 SHARON FOERSCHLER: Right.

17 HEARING OFFICER: Did not participate in
18 Construction Manual Rewrite Project as assigned.

19 SHARON FOERSCHLER: Right, I believe I testified
20 earlier that he often would leave at lunch when he felt like
21 it, not when we were breaking. If we were still working and
22 he felt the need to get up and leave, he just would. He
23 wouldn't give any explanation, he would just get up and leave.

24 HEARING OFFICER: Well, in that regard, I have a
25 note and maybe I have it wrong, but that the construction

000234

1 rewrite on Fridays was all-day, roughly 3:00 PM. It was a
2 request of him but not an assignment.

3 SHARON FOERSCHLER: Oh, I guess, I would call it an
4 assignment. We told him that he was to be in the rewrite
5 meetings with us. HEARING OFFICER: All right. So,
6 he was assigned. Who made the assignment? Was that one of
7 your assignments or Steve's or Jeff's, whose?

8 SHARON FOERSCHLER: It probably would've been Jeff's
9 at my direction.

10 HEARING OFFICER: Okay. Inability to follow
11 direction. Now, the direction you indicate in 2A was that
12 there was a partnering conference that he took flex time off
13 during that week. What was the problem with that?

14 SHARON FOERSCHLER: So, he was instructed to--so,
15 we're on flexible schedules. So, once you get your 40-hours
16 in for a week, you're done. Unless you ask for overtime, it
17 doesn't matter if you work 10-hours a day or eight hours a
18 day.

19 HEARING OFFICER: So, you don't have regular 4s,
20 or regular 10s, or regular 8s?

21 SHARON FOERSCHLER: Our Department has--

22 HEARING OFFICER: So, you're a 40-hour--40 hour
23 week.

24

25

000235

1 SHARON FOERSCHLER: We are. If you sign-if you sign
2 that agreement, per our policies at NDOT, right, you can be on
3 that flexible schedule.

4 HEARING OFFICER: Okay.

5 SHARON FOERSCHLER: And so, he signed that agreement
6 that he would be on that flexible schedule. That allows us
7 from a management of our job duties to work according to our
8 workload, etc. So, he signed up for the flexible schedule.
9 He was directed that week to attend the partnering conference
10 in Reno and don't worry about coming into work on those days,
11 just go to the conference, so that you're here on Friday. He
12 did not follow that direction and ended up leaving-

13 HEARING OFFICER: During that week, what week was
14 that? Do you recall? Was it five days?

15 SHARON FOERSCHLER: It was a three-day conference.

16 HEARING OFFICER: Three-day conference. Starting
17 on?

18 SHARON FOERSCHLER: Tuesday through-Tuesday.

19 HEARING OFFICER: A Tuesday? So, Tuesday,
20 Wednesday, Thursday?

21 SHARON FOERSCHLER: Correct.

22 HEARING OFFICER: So he had to be in the office,
23 expected to be in the office Monday and Friday?

24 SHARON FOERSCHLER: Correct.

25 HEARING OFFICER: All right.

000236

1 SHARON FOERSCHLER: So, Monday he worked nine and a
2 half hours. Tuesday, he worked five and a half hours in the
3 office and then went to the partnering conference for four
4 hours. So, he worked extra hours earlier in the week and took
5 off early on Friday, which is not what we discussed and
6 directed him to do.

7 HEARING OFFICER: If you do the calculation for
8 the 40-hour week, between Monday and Friday, somewhere he has
9 to get 40 hours.

10 SHARON FOERSCHLER: Uh huh.

11 HEARING OFFICER: For the partnering conference,
12 he would've had Tuesday, Wednesday, Thursday and those
13 would've been work days, or work hours, I take it. They
14 would've filled in for, as a part of or included in the 40-
15 hour calculation.

16 SHARON FOERSCHLER: Correct. Correct.

17 HEARING OFFICER: My questions aren't always good.
18 It takes a while for me to get them out. So, that week, what
19 did he fail to do in terms of the 40-hours? Did he not meet
20 the 40-hours or did he simply not attend fully the partnering
21 conference?

22 SHARON FOERSCHLER: He met his 40-hours. He
23 attended the partnering conference, however, he worked
24 additional hours on Monday and Tuesday when he was instructed
25 not to and took off early on Friday.

000237

1 HEARING OFFICER: All right. Okay. Do you know
2 what he was doing on Tuesday that was—I mean, would there be
3 projects in which somebody had to do something, I mean, you
4 know, every once in a while, I'm scheduled to be some place
5 Tuesday, Wednesday and Thursday but I've got this carryover
6 from Monday that I have to do Tuesday morning or something
7 like that?

8 SHARON FOERSCHLER: I can't answer that, I don't
9 know.

10 HEARING OFFICER: Okay. All right. You feel
11 strongly that he should've—coming in with apparently his
12 background, assessment early on in terms of a hire, accepting
13 him as a transfer. Let's put it that way. You expected him
14 to be above standards, why is that? And, did you tell him
15 that?

16 SHARON FOERSCHLER: I don't believe I told him that
17 but he told us many times how he was above standard and he,
18 you know, had excelled in his career and what he had done. He
19 and I had a couple of conversations where he expanded on how
20 much he had done in his career and we talked about management
21 challenges and whatnot. You know, it just led me, with his
22 resume and him talking, to expect that he was really going to
23 excel at the job assigned.

24

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000238

1 HEARING OFFICER: It was your expectation as much
2 as, in hoping based on what you knew about him and what he
3 said that he would be an above-standard employee.

4 SHARON FOERSCHLER: Yes.

5 HEARING OFFICER: All right. But obviously, he
6 was meets standards in his first evaluation for three months
7 or whatever that time period is. And you signed on that.

8 SHARON FOERSCHLER: Oh huh.

9 HEARING OFFICER: Why did you sign if you knew it
10 was going to be different than what your expectations were of
11 him?

12 SHARON FOERSCHLER: That's a good question. In
13 hindsight, I shouldn't have, it was his 11-month evaluation.
14 He went on vacation for a week and a half, directly after
15 that. So, we didn't have the opportunity to discuss it and
16 pull it back. Per our Human Resources Division, you're
17 required to have an 11-month evaluation. So, if I waited
18 another week and a half, then I exceeded that 11-month
19 evaluation.

20 HEARING OFFICER: Well, he had no prior
21 evaluations period, before your Division, the evaluation on
22 the 24th of April.

23 SHARON FOERSCHLER: He should have. That wasn't
24 under my administration.

25

000239

1 HEARING OFFICER: That's why, thinking back about
2 Mr. Ratliff, being the immediate supervisor, he knew he had to
3 make-do something at three months. Seven months, he had that
4 opportunity and didn't do it. Says he doesn't want him back.
5 But there's nothing in whatever he did by way of his
6 responsibility as a Manager.

7 It's not just—I'm not just trying to make a case one
8 way or the other. I'm trying to get an understanding of how
9 employees are situated and what managers also have
10 responsibilities to do. Because employees come into a job
11 with some understanding of the job. Managers, hopefully and
12 the Employee are on the same page of what the expectations are
13 and the responsibilities.

14 So far, the testimony has been that there are two
15 different forms of job descriptions for what his--what Mr.
16 Bronder's responsibility was in Elko as opposed to what his
17 responsibilities were in Carson City. You kind of want to
18 make sure that everybody understands, Mr. Ratliff has no idea
19 what he was supposed to do in Carson City or where he failed.
20 But, when you call him did you tell him that, you were calling
21 him because you are terminating his probationary period and
22 wondering if he would come back, be eligible to come back to
23 Elko?

24

25

000240

1 SHARON FOERSCHLER: I called him strictly as a
2 courtesy to Mr. Bronder to see if Mr. Ratliff would take him
3 back. I could over that when I terminated him.

4 HEARING OFFICER: Did that conversation include
5 information to Mr. Ratcliff that you were terminating his
6 probationary status?

7 SHARON FOERSCHLER: Yeah.

8 HEARING OFFICER: All right. So, Mr. Ratliff, in
9 response to your question about coming back was informed that
10 his probationary status, that the probationary status of Mr.
11 Bronder was being terminated by you.

12 SHARON FOERSCHLER: Yes.

13 HEARING OFFICER: Okay. And you have no authority
14 over Mr. Ratliff.

15 SHARON FOERSCHLER: No.

16 HEARING OFFICER: I think I've got a better
17 understanding of how that operates. It's still a little bit
18 vague about expectations. There's clearly, at least an
19 acknowledgement that these are different jobs. The one in
20 Elko is different than the one in--than the job in Carson City.
21 The responsibilities. Perhaps a little bit broader, a little
22 more sophisticated in Carson City than perhaps in Elko.

23 I think I heard you say that while they may be
24 different, at some point in time they become very much the
25 same. That was on the implementation side. The doing of it.

000241

1 This, I have difficulty appreciating exactly what you're
2 saying about the implementation side of it because the
3 implementation side of what's responsible is responsible-Mr.
4 Bronder's responsibility in Carson City are much different
5 than what they were in Elko.

6 SHARON FOERSCHLER: Yes.

7 HEARING OFFICER: He had a much broader range of
8 responsibility with far more people, I suspect.

9 SHARON FOERSCHLER: He actually was supervising less
10 people in my office than he was as a Resident Engineer. He
11 was supervising my people.

12 HEARING OFFICER: Well, his immediate supervisor,
13 but in terms of what he had to do by way of implementation of
14 his responsibilities in Elko, without seeing what the job
15 specs are, I get the sense that the Resident Engineer is--could
16 be more people involved but at a different level of
17 responsibility than in Carson City. Carson City sounded like
18 it had a lot more elements, broader elements, more nuanced
19 elements and obviously a tremendous amount of federal overlay
20 in terms of what's acceptable, what's not acceptable and the
21 issues that came up regarding compensation of consultants and
22 how these contracts are put together. A) by way of
23 procurement, costing later and all those things. It sounds
24 like a much different environment.

25 SHARON FOERSCHLER: I would say it's different, yes.

000242

1 HEARING OFFICER: Okay. All right, thank you.
2 SHARON FOERSCHLER: You're welcome.
3 HEARING OFFICER: I appreciate it. Questions?
4 THOMAS DONALDSON: No sir.
5 LORI STORY: No, I have no further questions.
6 SHARON FOERSCHLER: Okay.
7 HEARING OFFICER: Thank you very much.
8 SHARON FOERSCHLER: You're welcome.
9 HEARING OFFICER: You're excused if you have other
10 things to do.
11 SHARON FOERSCHLER: Thank you, oh thank you.
12 LORI STORY: May we take a brief recess?
13 HEARING OFFICER: Yes.
14 THOMAS DONALDSON: Good.
15 HEARING OFFICER: And, are you going to get Mr.
16 Ratliff?
17 LORI STORY: Yeah, he'll be next up.
18 HEARING OFFICER: Okay.
19 LORI STORY: Can we use that phone? How will
20 we—
21 HEARING OFFICER: Yes, I have to figure out how we
22 do it. They usually call in.
23 LORI STORY: I can certainly text him a
24 number and have him call in. That's not an issue.
25

000243

1 HEARING OFFICER: I'll have to get this written
2 down about what his instruction is to call in and we'll put
3 this on speaker and then probably do it this way.

4 LORI STORY: Okay.

5 OFF THE RECORD

6 ON THE RECORD

7 HEARING OFFICER: All right, we're back on the
8 record. Mr. Bronder has returned and we have Mr. Ratliff on
9 the telephone. I take it that's the next witness for NDOT.
10 And, Mr. Ratliff, I'm going to swear you in. So, I'm going to
11 ask you, do you swear or affirm that the testimony you're
12 about to give in these proceedings will be the truth, the
13 whole truth and nothing but the truth?

14 BOYD RATLIFF: I do.

15 HEARING OFFICER: Thank you.

16 LORI STORY: Mr. Ratliff, would you please
17 state your name and spell it for the record?

18 BOYD RATLIFF: I'm sorry, that kind of broke up
19 a little bit. You want my name and what?

20 HEARING OFFICER: You know what, can you go down
21 farther? I'm never sure where this needs to be placed.

22 LORI STORY: Hold on a second, we're trying
23 to locate you somewhere.

24 HEARING OFFICER: Does this follow over there, or
25 maybe that will be sufficient to pick it up, I think. I have

000244

1 no idea. To be honest with you. We'd probably do better
2 recording with our iPhones.

3 LORI STORY: So, Mr. Ratliff, would you state
4 your full name and spell it for the record?

5 BOYD RATLIFF: It's Boyd Ratliff, B-O-Y-D, R-A-
6 T-L-I-F-F.

7 LORI STORY: And, what is your occupation?

8 BOYD RATLIFF: I am an Engineer.

9 LORI STORY: And, whose your Employer?

10 BOYD RATLIFF: Nevada Department of
11 Transportation.

12 LORI STORY: And, where is your office
13 located?

14 BOYD RATLIFF: Elko, Nevada.

15 LORI STORY: And, what is your job title with
16 NDOT?

17 BOYD RATLIFF: My current title is District
18 Engineer.

19 LORI STORY: What was your job title in
20 February of '16?

21 BOYD RATLIFF: It was Assistant District
22 Engineer.

23 LORI STORY: And in May of 2017?

24 BOYD RATLIFF: I was, at that time, still
25 Assistant District Engineer.

000245

1 LORI STORY: Who was the District Engineer at
2 that time?

3 BOYD RATLIFF: There wasn't one. It was
4 vacant, in May of 2017.

5 LORI STORY: Okay. When were you promoted
6 then?

7 BOYD RATLIFF: I believe it was in June of
8 2017.

9 LORI STORY: How long have you been with NDOT
10 in District III?

11 BOYD RATLIFF: Nine years.

12 LORI STORY: Do you know John Bronder?

13 BOYD RATLIFF: Yes, I do.

14 LORI STORY: How do you know Mr. Bronder?

15 BOYD RATLIFF: He worked here as a Resident
16 Engineer for I think six to nine months or something like
17 that.

18 LORI STORY: Were you involved in the hiring
19 of Mr. Bronder?

20 BOYD RATLIFF: Yes, I was.

21 LORI STORY: How were you involved?

22 BOYD RATLIFF: I was on the interview panel.

23 LORI STORY: Okay. And, how long was Mr.
24 Bronder--did you say how long he was there?

25

000246

1 BOYD RATLIFF: It seemed like it was six to
2 nine months, I believe.

3 LORI STORY: Was he a probationary employee?

4 BOYD RATLIFF: While he was here, he was on
5 probation, yes.

6 LORI STORY: And, did you supervise Bronder
7 at that time?

8 BOYD RATLIFF: Yes, I did.

9 LORI STORY: What was his position?

10 BOYD RATLIFF: He was a Resident Engineer.

11 LORI STORY: And, what are the duties of a
12 Resident Engineer?

13 BOYD RATLIFF: They supervise what NDOT calls a
14 construction crew. They're about 12 members on a construction
15 crew. They do all the testing, inspection and administration
16 of construction projects.

17 LORI STORY: Okay. And, as a new hire--was he
18 a new hire to the State?

19 BOYD RATLIFF: I believe he had some experience
20 with the State, but I know we had conversations about
21 [inaudible] that he'd worked on. I think it was John
22 Bradshaw, but that had been years before. So, I can't
23 remember if he was actually employed by the State. Oh you
24 know, I think he was. I think he worked on a dam project
25 here, South Fork Dam, and I don't remember exactly if he was a

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1 consultant working for the State or if he was a State
2 employee, but he had worked on projects for the State of
3 Nevada.

4 LORI STORY: Okay. But in his position with
5 District III, he was considered a new hire and probationary
6 employee, is that correct?

7 BOYD RATLIFF: Oh yes, yes. For us he was,
8 yes.

9 LORI STORY: Did you have an opportunity to
10 form an opinion of Mr. Bronder's performance as a Manager I in
11 District III?

12 BOYD RATLIFF: Yes.

13 LORI STORY: And what was that opinion?

14 BOYD RATLIFF: He was a competent employee. He
15 was getting the job done. I think there were two times that I
16 recall that I needed to talk to him with maybe some just
17 general kind of direction or coaching. They were relatively
18 benign at the time.

19 LORI STORY: Okay. Was he a good manager of
20 the staff, as far as you could tell?

21 BOYD RATLIFF: As far as I could tell, yes.

22 LORI STORY: How much information would you
23 have had about that?

24 BOYD RATLIFF: Well, we worked together
25 extensively on a discipline. That's usually the kind of

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1 things that--where you really get a lot of face-to-face time
2 with someone that's a supervisor. It was a pretty--I don't
3 know how to describe the discipline, you know, obviously it's
4 confidential. I don't want to describe the discipline per se,
5 but there was an employee that was not conforming to
6 standards. Wasn't following the rules basically and John and
7 I Worked together on that.

8 LORI STORY: Okay.

9 HEARING OFFICER: This was not John, it was
10 another employee. Not--not Mr. Bronder.

11 LORI STORY: It wasn't John [crosstalk] It
12 was, Mr. Bronder was actually the supervisor working with Mr.
13 Ratliff to conduct the discipline.

14 HEARING OFFICER: Just so--

15 LORI STORY: Yeah.

16 BOYD RATLIFF: Yes, that's correct.

17 LORI STORY: Okay. Thank you for confirming
18 that. Did there come a point when John left the position as
19 Manager I in District III?

20 BOYD RATLIFF: Yeah. He transferred to the
21 Construction Division. I believe it was a lateral transfer.

22 LORI STORY: A lateral transfer. Do you know
23 if he interviewed for that position?

24 BOYD RATLIFF: I believe so.

25

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1 LORI STORY: Okay. Did there come a point
2 when you were informed that Mr. Bronder was released from his
3 probation with the Construction Division?

4 BOYD RATLIFF: I had a conversation with Sharon
5 Foerschler. She had contacted me, just to sort of discuss
6 some of the performance issues. Then I kind of became aware
7 that he was going to be released from probation.

8 LORI STORY: And, what was the substance of
9 your discussion with her about his performance?

10 BOYD RATLIFF: Well, she described that he
11 wasn't around or following direction. Specifically, she
12 worked at that time on rewriting some manuals, like the
13 construction manual was I think a really big one at the time.
14 She described that he sort of would be there and then left and
15 she--and wouldn't know where he was for large periods of time.

16 LORI STORY: Did Mr. Foerschler call you
17 about Mr. Bronder for any particular reason?

18 BOYD RATLIFF: She asked if I would be
19 interested in him transferring back.

20 LORI STORY: Okay. And what was your
21 response?

22 BOYD RATLIFF: After our discussion with his
23 performance, and then the two instances that I recall having
24 some coaching with John where I wanted him to go a specific
25 direction but he sort of--his performance she described wasn't

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1 something that I had seen but then matched with what I had
2 coached him on, at least one of the items, and after our
3 conversation, I was not interested in him coming back.

4 LORI STORY: Did what was the nature of the
5 behavior that you coached him on?

6 BOYD RATLIFF: Well, there were things. One of
7 them was that discipline that I mentioned earlier, because
8 when he had the opportunity for the lateral transfer and I
9 believe it was offered to him, he came to let me know and he
10 was like, hey I'm going to be doing a transfer. I was like,
11 hey that sounds good. And as-about the same time, we were
12 coming up to a deadline with when that discipline needed to be
13 completed. I asked him where he was on that and he said, he
14 wasn't working on it anymore. I said, well, you need to get
15 this done before the deadline because after all the work we
16 put into it, if you don't meet that deadline, it doesn't
17 happen. We've lost our opportunity and then we're unable to
18 correct the behavior of that employee. He understood and then
19 he did that.

20 And then the other issue that I coached him on was,
21 he had asked to go to a training in Carson City, which I was
22 on board with. I can't remember what it was, but it was a
23 two-day training and I believe it was after-the week after he
24 submitted his per diem, I noticed that he was down there for
25 five days. I asked in front of him about it, I said, hey this

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1 was a two-day training, why were you there for the whole week?
2 He said, oh well, the two-days weren't back to back so I just
3 went down there for the whole time. So, I sort of coached him
4 on being, you know, forthcoming with information because that
5 would've changed-possibly changed the dynamic of him going
6 down there because there were days when he was not in training
7 but he wasn't at his duty station either.

8 LORI STORY: So, did he take leave for those
9 days that he wasn't at his duty station?

10 BOYD RATLIFF: I don't remember. I don't
11 believe so. I think I-because it was a coaching, I wanted to
12 basically-you know, if he didn't know that that wasn't okay, I
13 wanted to make sure that, okay, from this point forward, this
14 is how we do business. We're forthcoming with the
15 information, you explain where you're going to be and don't
16 leave out these details that are pertinent to the
17 conversation.

18 LORI STORY: Okay. And so, in your mind, how
19 did those two instances line up with what you heard from Ms.
20 Foerschler?

21 BOYD RATLIFF: Well, when she mentioned that
22 you know, he was just not there, where he was assigned and she
23 didn't know where he was, that lined up with the not being
24 forthcoming with the information, not being at a duty station
25

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1 and being gone for an entire week when you really only had two
2 days of training.

3 Then, as far as the discipline, it was kind of the
4 same idea. Like, hey, this is a supervisory task. You need
5 to follow through and complete this. You can't just drop it
6 because it's important.

7 LORI STORY: Okay. So, during the
8 conversation with Sharon, did she--well, scratch that. Did Mr.
9 Bronder ever call you to ask if he could have his position
10 back?

11 BOYD RATLIFF: He called me. I cannot remember
12 the date. He asked about coming back to District III. At the
13 time he called, I believe we had a process going for
14 recruitment, but I don't remember if it was closed, if we had
15 already interviewed, I don't remember that, but he did say,
16 hey it possible that I would be able to come back to District
17 III.

18 LORI STORY: And, what was your response?

19 BOYD RATLIFF: I said, yeah.

20 LORI STORY: Yeah, I'll take you back or
21 yeah, you have to apply or what?

22 BOYD RATLIFF: Well, no I said, yeah, you know,
23 through the competitive process, applying and coming in, we
24 would do that.

25

000253

1 LORI STORY: So, as a probationary employee,
2 do probationary employees have a reversionary right?

3 BOYD RATLIFF: I don't know.

4 LORI STORY: Did Bronder apply for a District
5 III position after he had been released from probation with
6 Construction?

7 BOYD RATLIFF: He did.

8 LORI STORY: And, when was that if you
9 recall?

10 BOYD RATLIFF: I believe it was in the fall of
11 2017. Fall or winter.

12 LORI STORY: And, did you interview Mr.
13 Bronder?

14 BOYD RATLIFF: When I got the list for that--
15 because he had been termed and just to make sure that I was
16 protecting the State's interest, I called HR to verify what
17 procedure I should follow because it was unusual that someone
18 that had been released was trying to come back. It was the
19 first time I had ever encountered that.

20 LORI STORY: Okay.

21 BOYD RATLIFF: And, I just wanted to make sure
22 that I wasn't miss stepping. So, I contacted them to verify
23 what steps I should take.

24 LORI STORY: Do you recall who you spoke to?
25

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1 BOYD RATLIFF: I believe it was Cory
2 Constantino that I talked to.

3 LORI STORY: And, did you get an answer
4 straight away?

5 BOYD RATLIFF: No. No, she said she was going
6 to look into that and then get back to me.

7 LORI STORY: And, did someone get back to
8 you?

9 BOYD RATLIFF: Yes.

10 LORI STORY: And, what were you advised?

11 BOYD RATLIFF: I was advised because he had
12 been released from--well, terminated, that he did not need to
13 be interviewed.

14 LORI STORY: And, was the term "terminated",
15 who used that term?

16 BOYD RATLIFF: Well, I believe that was the
17 term that was used, but I don't recall every word of that
18 conversation.

19 LORI STORY: Okay. So, you did not interview
20 him then.

21 BOYD RATLIFF: That's correct.

22 LORI STORY: Because you believe he was
23 disqualified from the interview?

24 BOYD RATLIFF: I believe he had been
25 disqualified based on that conversation.

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1 LORI STORY: Okay. At that time, apart from
2 this termination advice, had anyone spoken to you or had you
3 heard any directive--well, had you heard anything about Bronder
4 making any kind of a whistleblower or report at bad behavior
5 at NDOT?

6 BOYD RATLIFF: I had heard one thing, not-I
7 don't specifically remember that, but I had a phone call from
8 Reid Kaiser. He called and the basic gist of that
9 conversation, that I recall was that he was asking about just
10 my experience with John and he had mentioned that he was upset
11 and didn't like the way we were doing business. I don't
12 remember, I think it was about consultants--

13 LORI STORY: Okay.

14 BOYD RATLIFF: --but I don't know--I don't recall
15 any more specifics than that from that conversation. It was a
16 brief phone call.

17 LORI STORY: Was that the purpose of the
18 phone call?

19 BOYD RATLIFF: I don't remember.

20 LORI STORY: Okay.

21 BOYD RATLIFF: I think he wanted to know more
22 about my experience with John, but then he mentioned that, in
23 that conversation but I don't remember much more than that.

24 LORI STORY: Okay. Did Mr. Kaiser act as
25 though Mr. Bronder's questions were inappropriate?

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1 BOYD RATLIFF: No, I think the gist was that,
2 you know, there were certain things that John had an issue
3 with that he was bringing up. In the conversation with Reid
4 it was, you know, things that we do as an Agency that are, you
5 know--they're not an issue. That's kind of how we do things
6 based off of our recruitments, or not recruitments, but I
7 guess procurement of professional services because we have--we
8 have certain rules we have to follow with NRSs and federal
9 rules and things like that, as far as the costs and contracts.
10 I think that's kind of what the issue was, I think that John
11 thought it was too expensive or that we were paying too much
12 or something like that. In my conversation with Reid it was,
13 you know, not--it was--just sort of seemed like, he didn't fully
14 understand all of those different things that go into that.

15 LORI STORY: Okay. Were you aware of that--
16 let's see. Have you interviewed Mr. Bronder since 2017 for
17 any position with NDOT?

18 BOYD RATLIFF: Yes.

19 LORI STORY: What position was that?

20 BOYD RATLIFF: He interviewed for a Resident
21 Engineer position.

22 LORI STORY: When was that?

23 BOYD RATLIFF: It was this fall. I don't
24 remember, I want to say September/October.

25

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1 LORI STORY: And, was he offered that
2 position?

3 BOYD RATLIFF: He was not.

4 LORI STORY: And, why is that?

5 BOYD RATLIFF: There was a better candidate.

6 LORI STORY: Okay. Was there--have you ever
7 received any instruction or any indication that Mr. Bronder
8 should be blacklisted or not considered for employment?

9 BOYD RATLIFF: No.

10 LORI STORY: If Mr. Bronder had been the
11 better candidate, would you have accepted him back?

12 BOYD RATLIFF: Yes.

13 LORI STORY: Have you ever directed not to
14 hire or fire someone within NDOT without good cause?

15 BOYD RATLIFF: Without good cause? No.

16 LORI STORY: No one has ever told you to just
17 get rid of anybody?

18 BOYD RATLIFF: No.

19 LORI STORY: Have you ever retaliated against
20 an employee for raising concerns with NDOT about practices or
21 contracting?

22 BOYD RATLIFF: No.

23 LORI STORY: Are you familiar with the fact
24 that questions of this nature come up quite a bit?

25

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1 BOYD RATLIFF: I know the Transportation Board
2 has reviewed this stuff quite a bit and I have remotely
3 observed the Transportation Board Meetings and I have seen
4 some of those questions, yes.

5 LORI STORY: Okay, so-

6 BOYD RATLIFF: Other than that, I haven't.

7 LORI STORY: All right. So, going back to
8 the November 2017 interview list, the reason you did not
9 interview Mr. Bronder was because HR advised you that it was
10 appropriate not to do so?

11 BOYD RATLIFF: That is correct.

12 LORI STORY: Anybody else offer any advice or
13 opinion about that to you?

14 BOYD RATLIFF: No.

15 LORI STORY: You didn't talk to Mr. Kaiser
16 about it or Mr. Malfabon?

17 BOYD RATLIFF: No, I didn't.

18 LORI STORY: Okay. I don't have any further
19 questions.

20 HEARING OFFICER: Mr. Donaldson?

21 THOMAS DONALDSON: Yes. Mr. Ratliff, my name is
22 Tom Donaldson, representing Mr. Bronder today. Regarding
23 these two, I think you called them benign issues that you had
24 with him when he was in Elko, those were documented in any
25 way, were they?

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1 BOYD RATLIFF: No, those were verbal coaching
2 sessions.

3 THOMAS DONALDSON: How long have you been preparing
4 evaluations for the State? Performance evaluations.

5 BOYD RATLIFF: Nine years.

6 THOMAS DONALDSON: How many employees were you
7 evaluating in 2016, when Mr. Bronder was there?

8 BOYD RATLIFF: Let's see, I would have had
9 approximately four direct reports, maybe five direct reports.

10 THOMAS DONALDSON: Have you ever evaluated a
11 probationary employee before?

12 BOYD RATLIFF: Yeah.

13 THOMAS DONALDSON: Are you aware that there are
14 three evaluations required at three months, five months and 11
15 months for probationary employees?

16 BOYD RATLIFF: I believe it's three, seven and
17 11, yes.

18 THOMAS DONALDSON: Excuse me, did I say five? Yes.
19 Are you aware that you did not evaluate Mr. Bronder for the
20 third or fifth month of his probationary period?

21 BOYD RATLIFF: Yes.

22 THOMAS DONALDSON: I guess I'll ask why?

23 BOYD RATLIFF: Because my evaluation of him was
24 that he was performing and he was performing to standard.
25 That being the case, I didn't feel a need to do the

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1 evaluation, particularly because he was stationed, during
2 those months in-for the most part in Ely, Nevada.

3 THOMAS DONALDSON: And, do you know who
4 specifically, supposedly told you that you did not have to
5 interview him because he had been terminated previously?

6 BOYD RATLIFF: I believe-I asked the question
7 about what steps to take to Cory Costantino. I don't remember
8 if it was Cory Costantino or Tanya Stevens who responded. It
9 was one of those two.

10 THOMAS DONALDSON: Was that by phone or email?

11 BOYD RATLIFF: I believe by phone.

12 THOMAS DONALDSON: That's all I have.

13 HEARING OFFICER: Any further questions? Re-
14 direct?

15 LORI STORY: Is it your understanding, Mr.
16 Ratliff that if an employee does not receive a written,
17 evaluation then it is considered to be a standard evaluation?

18 BOYD RATLIFF: Yes.

19 LORI STORY: And is that the reason you did
20 not prepare a written one?

21 BOYD RATLIFF: That is correct.

22 LORI STORY: I have no further questions.

23 HEARING OFFICER: Anything that that prompts?

24 THOMAS DONALDSON: Well, I'll give you the statute,
25 but technically that only applies to annual evaluation for

000261

1 post-probationary employees. There's no such provision for
2 probationary employees.

3 HEARING OFFICER: You can ask Mr. Ratliff if he
4 was aware of that difference.

5 THOMAS DONALDSON: Mr. Ratliff, are you aware of
6 the difference as far as the deemed standard evaluation being
7 only applicable to post-probationary employees who did not
8 receive an annual evaluation, other than probationary
9 employees.

10 BOYD RATLIFF: I did not know there was a
11 difference, so I'm actually going to make a note of that.

12 THOMAS DONALDSON: Very good.

13 HEARING OFFICER: All right. Well, if there's
14 nothing further, I want to thank you Mr. Ratliff and you can
15 be excused.

16 BOYD RATLIFF: Thank you guys.

17 LORI STORY: Thank you.

18 HEARING OFFICER: Thank you.

19 LORI STORY: Have a good afternoon. All
20 right, my final witness is Ms. Tonya Sieben. [pause] Have a
21 seat right there.

22 HEARING OFFICER: Don't worry, it's not karaoke or
23 anything.

24 TONYA SIEBEN: That's good. I'm not a very
25 good singer.

000262

1 LORI STORY: So, would you please state your
2 full name and spell it for the record?

3 TONYA SIEBEN: My name is Tonya Sieben, T-O-N-
4 Y-A, last name is S-I-E-B-E-N.

5 LORI STORY: I believe Ms. Sieben needs to be
6 sworn in.

7 HEARING OFFICER: I was going to say, I don't
8 recall it. Would you raise your right hand please? Is the
9 testimony-do you swear or affirm the testimony you're about to
10 give today in this proceeding will be the truth, the whole
11 truth and nothing but the truth?

12 TONYA SIEBEN: Yes.

13 HEARING OFFICER: Thank you.

14 LORI STORY: Ms. Sieben, whose your employer?

15 TONYA SIEBEN: State of Nevada, NDOT.

16 LORI STORY: NDOT, and what's your current
17 position with them?

18 TONYA SIEBEN: Personnel Officer I.

19 LORI STORY: How long have you been in that
20 position?

21 TONYA SIEBEN: I was underfilling it. I just
22 met one year on December 18th.

23 LORI STORY: When you say "underfilling",
24 what do you mean?

25

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1 TONYA SIEBEN: I didn't qualify for the
2 Personnel Officer I minimum qualifications and we were allowed
3 to fill the position at a lower level, in a training capacity,
4 until I met the minimum qualifications.

5 LORI STORY: And, when did you start
6 underfilling that position?

7 TONYA SIEBEN: December 18th of '17.

8 LORI STORY: , What was your position before
9 then?

10 TONYA SIEBEN: Personnel Analyst II.

11 LORI STORY: Okay. And, did you have an area
12 of focus or expertise in that?

13 TONYA SIEBEN: In that position, it was
14 probably about 70% recruitment. I was reviewing applications,
15 certifying lists, processing personnel documents and sort of
16 supervising the leave programs.

17 LORI STORY: Okay. How many HR staff are at
18 NDOT here in Reno?

19 TONYA SIEBEN: At the headquarters building in
20 Carson we have four recruiters with two supervisors. So,
21 there's six or seven of us there.

22 LORI STORY: So, what were your main
23 responsibilities in October and November of 2017?

24 TONYA SIEBEN: Recruitment.
25

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1 LORI STORY: Okay. So, you were doing the
2 list certifications that you mentioned?

3 TONYA SIEBEN: Mainly posting recruitments and
4 reviewing applicants.

5 LORI STORY: At that time, how familiar were
6 you with the disciplinary processes and procedures of the
7 State?

8 TONYA SIEBEN: I had very little experience
9 with that.

10 LORI STORY: Do you recall receiving a
11 question from--did you receive a question from one of your
12 coworkers related to a recruitment list for a posting in
13 District III in November of 2017?

14 TONYA SIEBEN: I do.

15 LORI STORY: And, would you please tell the
16 Hearing Officer what that coworker asked?

17 TONYA SIEBEN: Cory came to me and asked if
18 there was an eligible list with someone who was terminated in
19 the last year, if we had to consider them or interview them.
20 In our research, I looked at training material that I had and
21 I felt that we did not have to consider that person.

22 LORI STORY: Did Cory say terminated? Did
23 she use that term specifically?

24 TONYA SIEBEN: I think she--from what I recall,
25 she knew that it was Mr. Bronder that was on the list. In the

000265

1 processing of my payroll documents that I also did in that
2 position, I knew that he had been terminated. So, knowing
3 that, it happened within the last year--

4 LORI STORY: Did you understand the
5 difference between a probationary release and a termination at
6 that time?

7 TONYA SIEBEN: No, I did not.

8 LORI STORY: So, did you suspect there was a
9 difference?

10 TONYA SIEBEN: I didn't, actually, until I was
11 questioned to come here and got to do research on that
12 [inaudible]

13 LORI STORY: You said you referenced some
14 training materials, what training materials were those?

15 TONYA SIEBEN: I teach interviewing and hiring.
16 There on the coded lists cover sheet, that tells you what
17 codes you can use on the list. One of them is not considered
18 per NAC 284, I don't recall the last three numbers. I have
19 that NAC on a blank sheet of paper and I have that within the
20 training materials. So, I utilize that as a reference for
21 people. For the supervisors that are being trained.

22 LORI STORY: So, you referred to that and
23 answered Cory's question. Did Cory then convey the
24 information to the person?

25

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1 TONYA SIEBEN: That's what I recall, yes, I
2 don't recall talking to Boyd at all.

3 LORI STORY: Did you seek guidance from
4 anyone else in the HR Office before answering this question?

5 TONYA SIEBEN: I don't remember going to
6 anybody else, no.

7 LORI STORY: And, do you know why you didn't
8 go to anyone else?

9 TONYA SIEBEN: I can say that there were
10 several vacancies above me for quite a period of time. I
11 don't know if that was during that period. Looking back now,
12 I feel like I probably should've because I know that it was
13 wrong, but I did not go to anybody else.

14 LORI STORY: So, at the time you felt
15 confident in your answer?

16 TONYA SIEBEN: I felt pretty confident that I
17 was doing the right thing.

18 LORI STORY: Did you read the statute first?

19 TONYA SIEBEN: I read down to where it says,
20 you cannot consider them for any of these reasons and it
21 refers to an NRS and that NRS says, you don't have to if they
22 were terminated for delinquency or misconduct. To me, that's--
23 if you were released or terminated, it was probably because of
24 those reasons.

25

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1 LORI STORY: So, there has since come a time
2 that you realize that that was an error?

3 TONYA SIEBEN: Yes, absolutely.

4 LORI STORY: And, can you tell us again how
5 you became aware of that error?

6 TONYA SIEBEN: I was pulling documentation for
7 this case and it came up, do you remember this?

8 LORI STORY: Okay. Since that time, you
9 understand there is a difference between probationary-a
10 probationary release and a termination?

11 TONYA SIEBEN: Absolutely.

12 LORI STORY: And, would you provide Mr.
13 Ratliff or Cory with the same answer today as you did at that
14 point?

15 TONYA SIEBEN: I would not.

16 LORI STORY: Did-[pause] Has Mr. Bronder
17 applied for jobs since then?

18 TONYA SIEBEN: I did pull some records last
19 week out of the recruitment system and I do see that he has
20 applied for other positions, yes.

21 LORI STORY: Okay. And, do those records
22 indicate that he's also been interviewed for those positions?

23 TONYA SIEBEN: I know of one for our Winnemucca
24 [crosstalk]

25

000268

1 LORI STORY: Could you take that little black
2 binder there and turn to Exhibit F? Do you recognize that
3 document?

4 TONYA SIEBEN: Yeah.

5 LORI STORY: What is that document?

6 TONYA SIEBEN: So, Division of Human Resource
7 Management has a website where all--anyone interested in state
8 jobs can go out and create a profile and apply for positions.
9 I went to Mr. Bronder's profile and was able to look at his
10 [inaudible] and I took some screenshots here that show all of
11 the applications that have been submitted, utilizing his
12 employee account.

13 LORI STORY: Okay. And, these pages indicate
14 he has in fact been interviewed for a number of DOT positions?

15 TONYA SIEBEN: On the second page, where it
16 shows the lists, you can see what lists he's been certified on
17 and yes, there are several with the Department of
18 Transportation.

19 LORI STORY: So, as an HR professional, and
20 working for the state system do you know whether probationary
21 employees--do you know what the difference between a
22 probationary employee and a permanent employee is?

23 TONYA SIEBEN: I do.

24 LORI STORY: Can you give me a general
25 description of--

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1 TONYA SIEBEN: Sure, a probationary employee is
2 someone who starts with the State and they have to fulfill 12-
3 months of probation. After that, they become a permanent
4 state employee. If they take a promotional opportunity, they
5 could be holding a trial period, which still means you're a
6 permanent state employee but you could be rejected back to
7 your previous position if you don't meet that trial period.

8 LORI STORY: Do probationary employees have
9 any right of reversion?

10 TONYA SIEBEN: No. Not that I'm aware of.

11 LORI STORY: In a situation like Mr.
12 Bronder's where he's transferred--starts in one position and he
13 transferred to another, that would not be a possibility?

14 TONYA SIEBEN: For a lateral transfer to a
15 different position within the same title, I would say no.

16 LORI STORY: When a probationary employee is
17 released from probation, is it necessary or recommended to
18 give him--is it necessary to give a reason for that release to
19 the employee?

20 TONYA SIEBEN: In my experience with it, we
21 don't provide an explanation.

22 LORI STORY: So, if you were to advise--a
23 supervisor was going to release someone, you would advise them
24 to simply notice the employee that they're being released and
25 not offer an explanation?

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1 TONYA SIEBEN: Yes.

2 LORI STORY: When you advise Mr. Ratliff to
3 remove Mr. Bronder from the interview list, had you been
4 directed by anyone to give that advice?

5 TONYA SIEBEN: No. It was Cory and I reviewing
6 my training material and me-me giving her that direction.

7 LORI STORY: Have you heard or ever received
8 any information related to directions that Mr. Bronder should
9 not be interviewed in future cases?

10 TONYA SIEBEN: No.

11 LORI STORY: Would you look at Exhibit C?
12 ER038. Do you recognize that email? Look at the top, is that
13 to you, from [inaudible].

14 TONYA SIEBEN: Yeah. I do. I am recognizing
15 this.

16 LORI STORY: Okay. And, when did you obtain
17 this information, this email?

18 TONYA SIEBEN: It looks like on May 15th.

19 LORI STORY: And, do you recall the
20 circumstances under why you received it?

21 TONYA SIEBEN: I believe I was collecting
22 information for you for this case.

23 LORI STORY: So, this email did come to you
24 from Mr. [inaudible]?

25 TONYA SIEBEN: Yes.

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1 LORI STORY: One second. [pause] I have no
2 further questions.

3 HEARING OFFICER: Mr. Donaldson?

4 THOMAS DONALDSON: Ms. Sieben, my name is Tom
5 Donaldson, representing Mr. Bronder. Just a couple of
6 questions. When did you start with NDOT?

7 TONYA SIEBEN: At the end of June in 2010.

8 HEARING OFFICER: I'm sorry?

9 TONYA SIEBEN: In the end of June in 2010.

10 THOMAS DONALDSON: In which position?

11 TONYA SIEBEN: I was a Personnel Tech III.

12 THOMAS DONALDSON: Then when were you promoted to
13 Personnel Analyst II?

14 TONYA SIEBEN: I had to have three years as a
15 Tech to qualify for the one and then I believe I had to have--
16 not looking at the minimum qualifications, I believe I had to
17 have two or three years as an Analyst I to promote to the II.

18 THOMAS DONALDSON: So, around 2013 to the one?

19 TONYA SIEBEN: I would say.

20 THOMAS DONALDSON: Roughly.

21 TONYA SIEBEN: Uh huh.

22 THOMAS DONALDSON: And then around 2015 to the 2?

23 TONYA SIEBEN: Yeah, I think that would
24 probably be about right.

25

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1 THOMAS DONALDSON: And, you were primarily
2 responsible for recruiting and reviewing lists, etc., as a 2?

3 TONYA SIEBEN: Reviewing lists, it a very small
4 piece of our job. It was mainly setting up recruitment and
5 reviewing applications for eligibility and then sending those
6 lists out to the supervisors.

7 THOMAS DONALDSON: Did you do that as a Personnel
8 Analyst I as well?

9 TONYA SIEBEN: I did.

10 THOMAS DONALDSON: Did you do it as a Personnel
11 Tech?

12 TONYA SIEBEN: As a Personnel Tech, I had-I was
13 more in charge of the personnel documents and auditing and
14 processing those. The recruitments that I did were very low
15 level and did-yeah, that's-I was, but there were less
16 recruitments and more personnel documents.

17 THOMAS DONALDSON: So, you've had seven or eight
18 years, even nine now, dealing with recruitments and lists and
19 applications. You have to answer verbally.

20 TONYA SIEBEN: Yes, correct.

21 THOMAS DONALDSON: Okay.

22 TONYA SIEBEN: Sorry, my first time.

23 THOMAS DONALDSON: Okay. Do you know how long
24 Cory's been with NDOT?

25

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1 TONYA SIEBEN: She was [inaudible] out in Elko.
2 [pause] I want to say she's been in our office for two to
3 three years, maybe.

4 THOMAS DONALDSON: You're not sure how long she was
5 in Elko?

6 TONYA SIEBEN: No.

7 THOMAS DONALDSON: Do you know what her position
8 is?

9 TONYA SIEBEN: She's a Personnel Tech III. She
10 just recently within the last month or two was promoted to an
11 Analyst I.

12 THOMAS DONALDSON: That's all I have.

13 HEARING OFFICER: That it? Any re-direct? Do you
14 know what a lateral transfer is?

15 TONYA SIEBEN: A lateral transfer would be
16 going from the same title to another position with the same
17 title.

18 HEARING OFFICER: Does there make any difference
19 if there's a different job description?

20 TONYA SIEBEN: No.

21 HEARING OFFICER: Why not?

22 TONYA SIEBEN: I'm thinking of the coding and
23 the definition of a lateral transfer and it wouldn't indicate
24 any of the duties within that definition because of the
25 classification--the job classification, if it's classified for

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1 that title, it could have slightly different duties depending
2 on where it's at, but it would still be considered a lateral
3 transfer with the same title.

4 HEARING OFFICER: Even if the job duties are
5 different.

6 TONYA SIEBEN: Yes.

7 HEARING OFFICER: Thank you.

8 LORI STORY: I'm done. Thank you for
9 waiting.

10 TONYA SIEBEN: I can leave?

11 LORI STORY: Yes, you may.

12 HEARING OFFICER: You can be excused, thank you.

13 LORI STORY: Thank you Tonya.

14 HEARING OFFICER: All right. We've concluded the
15 presentation of the-NDOT's case, I take it.

16 LORI STORY: Yes, we have.

17 HEARING OFFICER: All right, is there any
18 rebuttal?

19 THOMAS DONALDSON: No need.

20 HEARING OFFICER: Okay. So, the evidentiary
21 portion of the hearing is concluded. We now move on to a bit
22 of the housekeeping questions that I always have.

23 Time for closing statements can be made either
24 orally or in writing.

25 THOMAS DONALDSON: Oral is fine.

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1 HEARING OFFICER: I always ask the parties, what
2 are their wishes?

3 LORI STORY: I'd like to do them in writing.

4 HEARING OFFICER: And, I usually get a split,
5 depending on the nature of the case.

6 THOMAS DONALDSON: I think we've briefed this case
7 plenty. Frankly, Mr. Bronder's out of pocket on this whole
8 thing, it's much more complicated than it needed to be in the
9 first place, this could've been done in one hearing in my
10 opinion. Not that I'm second guessing-

11 HEARING OFFICER: Well, I'll accept responsibility
12 for a portion of it.

13 THOMAS DONALDSON: -decision to bifurcate it, but
14 there's--there's nothing to brief here. You have the evidence.
15 You've heard all the testimony. All we need to do is
16 summarize it. We don't have a transcript so, let's get it
17 over with.

18 HEARING OFFICER: Well, I gather NDOT's interest
19 is to submit something in writing.

20 LORI STORY: Well, I-[pause] Well, I'm
21 prepared to go forward if you want.

22 HEARING OFFICER: I don't want to foreclose
23 anybody with their wishes.

24

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1 LORI STORY: I think Mr. Donaldson is
2 correct, you're pretty well briefed. I'm not sure that
3 there's—

4 HEARING OFFICER: Well, you need a couple of
5 minutes?

6 LORI STORY: Sure.

7 THOMAS DONALDSON: Sure.

8 HEARING OFFICER: All right. Why don't you take
9 10 minutes. You can get your thoughts organized and we'll
10 take oral arguments, closing arguments. Mr. Donaldson will
11 have the opportunity to go first, followed by Ms. Story and
12 any rebuttal Mr. Donaldson wishes will be available to him.

13 THOMAS DONALDSON: Thank you.

14 OFF THE RECORD

15 ON THE RECORD

16 HEARING OFFICER: Okay. We're back on the record.
17 The evidentiary proceeding portion of this hearing has been
18 concluded and we're now into closing statements which will be
19 made orally. Mr. Donaldson, on behalf of Mr. Bronder.

20 THOMAS DONALDSON: Thank you sir. Finally. So, I
21 think, as I indicated, you're up on the statutes, the legal
22 authorities, etc., based on our prior pleadings, both in the
23 motion practice and the pre-hearing statements.

24 As far as the improper governmental action. Clearly
25 there was a gross waste of public money that Mr. Bronder

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1 reported to his supervisor, or to Mr. Lani on or about April
2 14, 2017. Certainly, Mr. Bronder was not alone in his
3 concerns for the consultant's rates that were being considered
4 by the Transportation Board. The Governor and Members of the
5 Board itself felt the same. I think the fact that Mr. Kaiser
6 was tasked with looking into this issue and had those bullet
7 points from his notes on ER037. He testified that the process
8 was actually subsequently revised to include standard hourly
9 rates for consultants speaks for the fact that there obviously
10 was an issue and there was public money being wasted at the
11 time.

12 As far as their reprisal or retaliatory action, the
13 list in NRS 281.641 is certainly not exhaustive. In Nevada,
14 of course, a probationary employee may be terminated for any
15 reason or no reason at all according to our Supreme Court, but
16 it cannot be against public policy. I think you noted in your
17 Order regarding the Transportation's Motion to Dismiss, if
18 you're going to dismiss somebody for blowing the whistle, if
19 you will, or in response to blowing the whistle, then that's
20 against public policy. Clearly.

21 I think the circumstances in this case, yes, we may
22 have a smoking gun and I'll get to that, but the circumstances
23 in this case and the timing as far as how this went down
24 within 11-months. When Mr. Bronder started with NDOT and the

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1 way he was treated at least at the end of that 11-month
2 employment speaks for itself.

3 The reasons given for Mr. Bronder's rejection from
4 probation I think are clearly pretextual. The evaluation
5 speaks for itself and the fact that it was overall meets
6 standards which Ms. Foerschler checked "agreed", when she
7 could've checked disagreed speaks much louder than her
8 attempts to either cover her butt or NDOT's butt after the
9 fact.

10 Frankly, I think the email that she sent was
11 fabricated based on the fact that it was attached to--
12 supposedly attached to an email from Mr. Freeman, or a
13 response to an email from Mr. Freeman that wasn't even
14 provided. Most likely she took an email that was totally
15 unrelated and prepared this Exhibit--

16 LORI STORY: I object to that. I object to
17 that. There's no--[inaudible]

18 THOMAS DONALDSON: The fact that--I mean, looking at
19 Exhibit E. You see her email. You see that there was a prior
20 email from Mr. Freeman and the only body of it is that, T-H-A-
21 T. Nothing regarding Mr. Bronder. Nothing regarding
22 anything that has to do with this case. Yet, here she is--and
23 she already admitted after the fact, she prepared this
24 timeline, which you went over with her showing supposedly that
25 he was being disobedient not attending the construction manual

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1 rewrite meetings when in fact, he attended every one of them
2 other than the one day that he was sick.

3 Yet, according to her bullet points that, yeah, she
4 may or may not have had to release Mr. Bronder on May 5, 2017
5 was one of the reasons that she supposedly got rid of him.
6 So, I think those types of issues, those types of
7 inconsistencies, those types of alleged reasons for releasing
8 an employee that's only been with them, I think it was a total
9 of eight weeks, seven I guess, if count the time that Mr.
10 Bronder was annual leave and not having any conversation with
11 the prior supervisor who did not prepare either a three-month
12 or a seven-month evaluation prior to Mr. Bronder transferring
13 to Carson City makes it appear that there has to be an
14 underlying reason, improper reason for the rejection of his
15 employment, on probationary term.

16 I think in this case, the smoking gun, if you will,
17 is the fact that if in fact it was—he was rejected for not
18 properly performing, why was he rejected a month prior to the
19 end of his 12-month probationary period? Certainly if they
20 had these—if they supposedly had these issues with Mr.
21 Bronder's performance, none of which he even knew about until
22 the 11-month of his 12-month probationary period, then why not
23 give him that last month to correct the alleged deficiencies?

24 But no, they didn't want him around any longer.
25 He'd already brought these issues up. He was already stirring

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1 the pot, causing trouble if you will. So, they were getting
2 rid of him.

3 So again, I think the circumstances clearly show
4 that the Department retaliated and yeah, they're not going to
5 admit to that. We're not going to have that email that says,
6 we're getting rid of Bronder and he's on the blacklist and
7 he's never going to work for NDOT again, as far as we're
8 concerned, that's not--that's never the case.

9 You can have the circumstantial evidence, the timing
10 of these things, the actions and inactions by the supervisors
11 and those in his chain of command that clearly this was a
12 lesson that his supervisor, Ms. Foerschler was going to teach
13 him and continues to, I think, as far as I can tell.

14 So, clearly that was within the two year period for
15 retaliatory action. As I indicated in my brief, certainly NAC
16 281.305, the 10-day working day period for filing a
17 whistleblower appeal is inconsistent with the two year filing
18 period specified in NRS 281.641 and under the numerous legal
19 authorities and Supreme Court cases that I cited in our brief,
20 a NAC cannot contradict or conflict with NRS. The NRS is the-
21 the final authority if you will for any type of issue that the
22 NAC is in violation or in contradiction of the NRS. The NAC
23 gives and the NRS controls.

24 I think the timing, as far as, being within that two
25 year period is clear cut. Slam dunk. Then you're left with

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1 the remedy. Yes, you can issue an order saying cease and
2 desist but you can also implement or issue the relief that Mr.
3 Bronder requested in his appeal. If you look at those things
4 that he wants, in essence, he wants reinstated as a
5 probationary employee. To get those 11-months that he worked
6 back, along with his sick leave and that Grade 43 pay that
7 he's no longer receiving.

8 That's no different than what Hearing Officer
9 Lansford-Levitt did in the Boyce Case, that also involved
10 NDOT. The Hearing Officer there reversed the improper
11 transfer and reinstated Mr. Boyce to a probationary status
12 with NDOT.

13 That's what we ask of you today. I'm going to be
14 short and sweet because you've heard all the witnesses, you've
15 seen all the documents and you've seen all the briefing.
16 That's why we ask that you uphold this appeal and reinstate
17 Mr. Bronder.

18 HEARING OFFICER: Thank you.

19 THOMAS DONALDSON: Thank you.

20 HEARING OFFICER: Ms. Story?

21 LORI STORY: Thank you sir. Mr. Donaldson is
22 correct that NAC cannot contradict the NRS. However, in
23 281.641(4), the Personnel Commission is charged with adopting
24 rules for procedures, pursuant to this section that are not

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1 inconsistent with the procedure set forth in NRS 284.390 to
2 284.485.

3 If you look at 284.390, you will see that the appeal
4 for a demotion, dismissal or suspension must be filed within
5 10 work days after the date the alleged reprisal or the
6 alleged dismissal occurred. Within 10 working days after the
7 effective date of the employee's dismissal. So, the NAC which
8 is 281.305 is not inconsistent with statute. It's consistent
9 with the statute that 281.641 directed the Commission to
10 follow.

11 Mr. Bronder's release from probation, his appeal of
12 that release from probation on a whistleblower basis is
13 untimely. It's not filed, it was not filed within the 10
14 days. He has a two year period within which he's protected
15 from reprisal, but he has only a 10-day period with which to
16 appeal that reprisal or to complain about it. He missed that
17 deadline by months.

18 Moreover, there's-

19 HEARING OFFICER: For the probation.

20 LORI STORY: For the probation. Absolutely,
21 for the probation. He did not file his appeal of that alleged
22 reprisal until six months later, more than six months later.

23 As the evidence has clearly shown, as Mr. Donaldson
24 likes to say, the removal from the interview list was a simple
25 human clerical error with no direction from anybody by a low-

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1 level functionary who had no input from NDOT supervisory staff
2 or anyone. It was an error. Clearly that claim is moot
3 because he since that time has been interviewed by NDOT
4 numbers of times.

5 The evidence is that Mr. Bronder was released from
6 probation because he was not an employee that the Construction
7 Division felt was going to make it in the long run. He was
8 not going to do the job he was charged to do. He was
9 forewarned when he accepted the lateral transfer that his
10 probationary period would not be extended and he was going to
11 have to prove himself in a very short period of time. He was
12 very confident that he could do that, however, his supervisors
13 were not impressed with his performance.

14 They had every right to release Mr. Bronder from
15 probation for no reason, but they did provide him with some
16 reasons. The reasons are documented by Mr. Foerschler,
17 explained by her.

18 And as far as her complaining about his following
19 instructions with the-with the editing of the construction
20 manual, part of her problem wasn't so much that he didn't
21 attend the meetings he was directed, but he was also doing
22 additional work and then complaining about it in his appeal,
23 like he'd been assigned additional work related to the edit,
24 which he had not been. The fact that he left the meetings
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1 without completing his time there, before the meetings were
2 complete at his convenience.

3 Probationary employee--additionally, what his
4 performance was like in the other position is irrelevant to
5 his performance in this job. This was the job he was going to
6 be in permanently. This was the job that they were concerned
7 about. True, he may have been fine as a Manager I, Resident
8 Engineer, but he was not going to be a permanent Resident
9 Engineer, he was in a position with the Construction Division.
10 They needed him to perform that job and he did not show that
11 he could do it.

12 There's no smoking gun. I'd be happy to supplement
13 the record with the continued email or ask Ms. Foerschler for
14 it. There's no smoking gun.

15 Mr. Bronder was dismissed for good reason. There's
16 no evidence that anybody took his report to Mr. Lani or to Mr.
17 Malfabon as anything more than a lack of understanding and
18 concern for tax dollars, sure. That's a concern that they've
19 heard over and over again, that they've tried to address. The
20 evidence was that it's an evolving process because all of the
21 concerns that there are about the high costs.

22 There's also evidence that they're constrained by
23 federal regulation. Mr. Bronder's report to Mr. Malfabon and
24 to Mr. Lani were not considered to be compromising or
25 dangerous or threatening to any--in any way to NDOT. There was

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1 no reason to retaliate against him for them. They had no
2 reason to retaliate and they did not retaliate.

3 Mr. Bronder did not fit well within the Construction
4 Division. He did not put his best foot forward during his
5 probationary period and performed at the above standard level
6 that he had sold himself to do, as he had promoted himself
7 when he interviewed for the job. There's no smoking gun. The
8 evidence is substantial and convincing that he was let go
9 because he was not an appropriate person for that position.

10 Temporal proximity isn't sufficient without more to
11 prove retaliation. I don't have anything further.

12 HEARING OFFICER: Mr. Donaldson?

13 THOMAS DONALDSON: Just briefly. I think as far as
14 the expectations that Mr. Bronder had when he started the
15 position in Carson City was far different than portrayed today
16 by his supervisor Ms. Foerschler.

17 If you look at the stipulated facts that are a part
18 of the record, and I don't know if we need to make those as an
19 additional-

20 LORI STORY: Those are for purposes of the
21 Motion to Dismiss only and I object to reference to them.

22 THOMAS DONALDSON: This was a stipulated facts that
23 Ms. Foerschler signed-

24 LORI STORY: For purposes-for purpose of a
25 Motion to Dismiss only.

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1 THOMAS DONALDSON: -in this proceeding.

2 LORI STORY: That was our understanding.

3 THOMAS DONALDSON: That's not the case. I mean,
4 they speak for themselves so, they're in the record, in this
5 case and you'll see that he transferred to Carson on February
6 13, 2017. Eleven days later he was finally giving-or, then
7 given the direction to participate in the Construction Manual
8 Rewrite, every Friday.

9 LORI STORY: I object.

10 THOMAS DONALDSON: And then three days later, he
11 was directed to learn the job duties of the other Manager I
12 who was retiring later that day. So, you can clearly see that
13 based on Miss-

14 LORI STORY: I object. These were for
15 purposes of the Motion to Dismiss only.

16 THOMAS DONALDSON: Foerschler's own stipulated
17 facts, unless she was agreeing when she signed that, that
18 there weren't any expectations of these additional duties that
19 he wasn't even evaluated on but were a part of his daily work
20 week every week, should not have been used against him for any
21 purpose, whatsoever.

22 As far as the rejection from the list, it's hard to
23 believe that a Personnel Analyst whose been doing these types
24 of recruitments and processing the lists and that for eight to
25 nine years would make an alleged mistake as the Department is

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1 alleging. I think she's the scape goat in this as far as the
2 second retaliatory act and I think that speaks for itself.
3 That certainly wasn't a simple human error. Somebody working
4 that many years in that position certainly should've known the
5 regulation and applied it and given proper advice and most
6 likely did. That's all I have.

7 HEARING OFFICER: All right. Thank you very much.

8 THOMAS DONALDSON: Thank you.

9 HEARING OFFICER: That concludes the proceeding.
10 I think for purposes of the record, since it's been at least
11 referenced, I'd like to see if you can retrieve the email as
12 it was attached to-

13 LORI STORY: I will ask Ms. Foerschler.

14 HEARING OFFICER: Ms. Foerschler's, and we'll
15 submit that as part of your Exhibit in that same number.

16 THOMAS DONALDSON: And, I had made an objection to
17 that Exhibit, primarily based on the fact that the entire
18 email was not provided, lack of foundation. I don't know if
19 you had accepted all of the State's Exhibits at this point or
20 is it subject to the supplemental part of that email message?

21 HEARING OFFICER: Well, I'd like to have a
22 complete record. A complete record when an email is submitted
23 that references another, it should be attached. That may
24 defeat the thing but we can also-we also had testimony

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1 concerning it, so we might as well round out that Exhibit with
2 the email to which that email references internally.

3 You can make a comment about it, Mr. Donaldson, if
4 you will, or wish to when it's provided. It will be part of
5 the record.

6 THOMAS DONALDSON: Do we have a deadline on the
7 State producing that?

8 HEARING OFFICER: As soon as practical.

9 LORI STORY: I'll try very hard to get it to
10 you early next week.

11 HEARING OFFICER: All right. I will tell you,
12 talking about timing, aside from the fact that this has been a
13 proceeding that's gone on for some time, as a result of motion
14 practice that we did necessarily had to deal with. That was
15 significant.

16 I wanted to say that I have a two-week hearing
17 coming up, starting Monday.

18 THOMAS DONALDSON: Wow, sounds like fun.

19 HEARING OFFICER: Well, everybody--it's a security
20 case, in which there's a panel of three arbitrators. I'm the
21 Chair and everybody was at least optimistic that there would
22 be a resolution but that didn't occur. So, we expect that the
23 next two weeks are going to be in hearings following lawyers
24 from various parts of the country and various-

25 THOMAS DONALDSON: Parties.

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1 HEARING OFFICER: -vested interests and brokerage
2 houses and stuff like that. So, I only say that because I
3 will try and get a decision out as promptly as possible. I'm
4 just telling you it's a little difficult-

5 THOMAS DONALDSON: Understandable.

6 HEARING OFFICER: I don't want you to feel that
7 I'm ignoring the case because I'm not. I think it's very
8 important. It always has-everything has consequences in these
9 proceedings. So, thank you all very much.

10 THOMAS DONALDSON: All right. Thank you.

11 JOHN BRONDER: Thank you.

12 [end of proceeding 3:47:55]
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CERTIFICATE OF TRANSCRIPT

I, Jaime Caris, as the Official Transcriber, hereby
certify that the attached proceedings before the Judge,

In the matter of:

JOHN BRONDER,

Employee

Appeal No.: 1802330-PHL

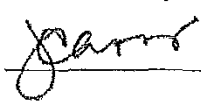
of

NEVADA DEPARTMENT OF
TRANSPORTATION,

Respondent

were held as herein appears and that this is the
original transcript thereof and that the statements
that appear in this transcript were transcribed by me
to the best of my ability.

I further certify that this transcript is a true,
complete and accurate record of the proceeding that
took place in this matter on January 17, 2019 in Carson
City, Nevada.



Jaime Caris
Always On Time
March 22, 2019

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1 STATE OF NEVADA
2 PERSONNEL COMMISSION
3 HEARING OFFICER

FILED
JAN 11 2019
DEPT. OF ADMINISTRATION
APPEALS OFFICER

5 JOHN BRONDER,)

6 Employee,)

7 vs.)

8 STATE OF NEVADA DEPARTMENT OF)
9 TRANSPORTATION,)

10 Employer.)
11

CASE NO. 1802330-PHL

NEVADA DEPARTMENT OF
TRANSPORTATION'S
PREHEARING STATEMENT

12 The Employer, Nevada Department of Transportation (Employer or NDOT) by and
13 through its counsel, Aaron D. Ford, Attorney General for the State of Nevada, and Lori M.
14 Story, Senior Deputy Attorney General, hereby submits this Prehearing Statement in the
15 above-entitled matter which is before this tribunal pursuant to NRS 281.641, NRS 284.385,
16 and NAC 284.774 *et seq.*

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I. INTRODUCTION

19 John Bronder (Bronder or Employee) claims that he was retaliated against by NDOT
20 after he complained to both Assistant Construction Engineer, Stephen Lani, and to NDOT's
21 Director Rudy Malfabon about what he thought was unnecessarily high costs for contract
22 work on highway construction projects. He claims the acts of reprisal for making these
23 reports include NDOT releasing him from probation in May 2017, and later removing him
24 from the eligibility list for an NDOT job posting in December 2017.¹ Bronder contends he

25 ¹ Bronder alleged that he was released from probation for his initial report/complaint to
26 Stephen Lani the Assistant Construction Engineer for NDOT. He did not, however, file his
27 whistleblower appeal until January 16, 2018, outside the 10 work-days appeal period allowed under
28 NAC 281.305. Thus any claim of retaliation as to that action is untimely. Employer maintains a
continuing objection to consideration of this alleged act of reprisal. However, evidence on this claim
will also be presented to ensure a full and complete record.

1 was notified of removal of his name from the eligibility list on January 5, 2018. He filed
2 his whistleblower appeal on January 16, 2018.

3 The evidence presented by NDOT will demonstrate that the discussions Bronder had
4 with the Assistant Construction Engineer in April 2017, and later with NDOT Director
5 Malfabon and Assistant Director Reid Kaiser in August, 2017, were not considered by those
6 individuals to be complaints of governmental wrongdoing. They reached this conclusion
7 because they knew that the payments made under the contracts were within the regulatory
8 guidelines published and enforced by the Federal Highway Administration (FHWA) for
9 obtaining, considering and awarding such contracts, and were justified based on the
10 construction schedules of the projects and the staffing levels within NDOT.

11 State highway construction contracts relying on federal highway funds are controlled
12 by funding regulations and requirements of the FHWA as set out in 23 USC § 112 and 23
13 CRF § 172.² The proposals and costs had also been reviewed and approved by the State
14 Transportation Board in public meetings that are held specifically to review, discuss and
15 approve (or not) such contracts. As a result, there was no secret as to the contracting costs
16 which a whistleblower could "reveal" and no wrongdoing uncovered or reported by Bronder.
17 Rather, NDOT leadership considered the meeting to be the result of Bronder's lack of
18 experience and understanding of the processes and realities of highway construction and of
19 the constraints imposed on those contracts by federal and state law. They considered his
20 questions to be a learning opportunity for him and for them, not some reason to hide or
21 seek protection from public scrutiny.

22 The evidence will further demonstrate that Bronder was properly and legally
23 released from his probationary status with the Construction Division of NDOT because he
24 had not shown he was able to do the work he was assigned, he did follow instruction he was
25 given, he was not fostering productive and effective relationships with his subordinates and

26
27 ² More information about federal oversight of state highway projects can be found at the
28 Federal Highway Administration website at www.fhwa.dot.gov/programadmin/consultant.cfm.
Copies of the most relevant sections of these federal laws are provided under a separate
"Supplemental Authorities" filing.

1 he had not shown initiative in improving the construction contracting processes. Overall,
2 Bronder proved not to be a good fit within the Constrution Division and he was properly
3 and lawfully released from probation because of his performance deficiencies before he
4 became a permanent employee.

5 The evidence will also show that no one at NDOT who was aware of the supposed
6 whistleblower reports took any action to retaliate against Bronder because he raised his
7 concerns about the costs of NDOT contracting. In fact, the evidence will show that
8 Bronder's removal from the eligibility list for an NDOT job posting, the only timely claim
9 raised in Bronder's appeal, was a clerical error on the part of a human resources technician
10 who misread the applicable statute and concluded that Bronder's release from probation
11 was the same as a dismissal for cause in NAC 284.374(4).

12 Finally, the evidence will show that despite this clerical error, Bronder has applied
13 for and been interviewed for several positions within NDOT and other State agencies since
14 his original erroneous removal from eligibility in late 2017. Thus, NDOT has already
15 ceased and desisted from erroneously (or otherwise) listing Bronder as ineligible to
16 interview due to an uncontested or upheld disciplinary action, NAC 284.374, and no order
17 for corrective action is warranted as to this claim, as it is moot.

18 II. STATEMENT OF FACTS

19 On June 6, 2016, Bronder was hired to fill a Manager I engineering position in the
20 Department of Transportation, District III in Elko, Nevada. As a new State employee,
21 Bronder was required to complete a one-year probationary period before becoming a
22 *permanent classified employee*. NRS 284.290. A probationary employee may be dismissed
23 at any time during the probationary period, so long as the dismissal complies with
24 regulations. *Id.*, NAC 284.458. Regulations require the dismissal be for a lawful reason
25 and notice be provided to the employee and the Deivision of Human Resource Management
26 before the expiration of the probationary period. *Id.*

27 On February 13, 2017, eight months into his probationary period, Bronder laterally
28 transferred to another Manager I position within NDOT in the Carson City Construction

1 Division. This transfer did not change his probationary status, but the new position came
2 with different job responsibilities than the Manager I position he started in Elko.

3 During the short period of time remaining on his probation, Bronder participated in
4 the negotiations of a Construction Engineering Service contract. Exhibit A, ER 007-009.
5 Following the Transportation Board meeting to consider the contract, Bronder met with
6 Assistant Construction Engineer Stephen Lani and expressed his concerns about the costs
7 of the contract apparently believing the contract employees were receiving pay at a rate
8 nearly twice the rate paid to State employees. Lani was not concerned about the report,
9 however, because he knew the rates included allowances for company overhead and profit
10 and that they were within the rates allowed by federal law.

11 In addition to this lack of knowledge on highway construction law, Bronder did not
12 demonstrate the necessary aptitude to meet the requirements of the new Construction
13 Manager position. Although his immediate supervisor gave Bronder an overall meets
14 standards review at eleven months (only three months in the Construction Division), the
15 review indicated at least two areas that were not meeting standards. *Id.* at ER 018-021.
16 This review was not in line with the Appointing Authority, Sharon Foerschler's view of his
17 performance. However, the evaluation was issued to Bronder before the Ms. Foerschler
18 had an opportunity to discuss it with Bronder's supervisor.

19 Because of the limited amount of time left in his probationary year and because there
20 is no option to extend a new employee's probation in these circumstances, NDOT
21 Construction Division could not simply give Bronder more time to demonstrate
22 improvement. NDOT had to make a decision whether Bronder, who presumably showed
23 his best work during his probationary period, had the skills and aptitude to become a
24 valuable and productive permanent NDOT employee. Bronder was ultimately rejected
25 from probation on May 5, 2017, and did not become a permanent classified employee for
26 NDOT. Bronder did not appeal his release or file a whistleblower appeal at that time.

27 After being released by NDOT, Bronder secured an engineer position with the
28 Nevada Department of Conservation and Natural Resources on October 10, 2017. He

1 immediately applied for another job with NDOT in Elko. As noted, he was removed from
2 the list of eligible candidates for that opening in December 2017, because of a clerical error.
3 Bronder continues to apply for engineering positions with NDOT and other state agencies,
4 and has secured a number of interviews from both NDOT and those other agencies.

5 III. LEGAL ARGUMENT

6 NRS 281.641(1) provides that a state officer or employee may file a written appeal
7 "if any reprisal or retaliatory action is taken against a state officer or employee who
8 discloses information concerning improper governmental action[.]" Only reports made for
9 a public purpose obtain whistleblower protections. *Wiltsie v. Baby Grand Corp.*, 105 Nev.
10 291, 293 (1989), 774 P.2d 432, 433 (1989).

11 NRS 281.641(4) authorizes the Personnel Commission to adopt rules of procedure for
12 conducting the hearing on whistleblower appeals. Regulations adopted by the Personnel
13 Commission have the full force and effect of law. *Turk v. Nev. State Prison*, 94 Nev. 101,
14 104, 575 P.2d 599, 601 (1978) (holding that the regulations prescribed by the Department
15 of Personnel have the "force and effect of law").

16 NRS 281.611(1) defines improper governmental action:

17 1. "Improper governmental action" means any action taken by a
18 state officer or employee or local governmental officer or
19 employee in the performance of the officer's or employee's official
20 duties, whether or not the action is within the scope of
21 employment of the officer or employee, which is:

22 (a) In violation of any state law or regulation;

23 (b) If the officer or employee is a local governmental officer or
24 employee, in violation of an ordinance of the local government;

25 (c) An abuse of authority;

26 (d) Of substantial and specific danger to the public health or
27 safety; or

28 (e) A gross waste of public money.

NRS 281.611(5) defines "reprisal or retaliatory" action as follows:

5. "Reprisal or retaliatory action" includes:

(a) The denial of adequate personnel to perform duties;

(b) Frequent replacement of members of the staff;

(c) Frequent and undesirable changes in the location of an
office;

(d) The refusal to assign meaningful work;

1 (e) The issuance of letters of reprimand or evaluations of poor
performance;

2 (f) A demotion;

3 (g) A reduction in pay;

4 (h) The denial of a promotion;

5 (i) A suspension;

6 (j) A dismissal;

7 (k) A transfer;

8 (l) Frequent changes in working hours or workdays; or

9 (m) If the employee is licensed or certified by an occupational
10 licensing board, the filing with that board, by or on behalf of the
11 employer, of a complaint concerning the employee, if such action
12 is taken, in whole or in part, because the state officer or employee
13 or local governmental officer or employee disclosed information
14 concerning improper governmental action.

15 In *Simonian v. University and Community College System of Nevada*, 122 Nev. 187,
16 128 P.3d 1057 (2006) the Nevada Supreme Court held:

17 The hearing officer must determine whether the action taken
18 was a reprisal or retaliatory action, and may issue an order
19 directing the proper person to desist and refrain from engaging
20 in such action.

21 *Id.* at 197, 128 P.3d at 1064 (internal citation and quotation omitted).

22 Nowhere in NRS Chapter 281 does it specifically authorize
23 hearing officers to independently determine whether the
24 government has actually undertaken improper governmental
25 action or to remedy such conduct.

26 ...

27 Thus, with respect to an NRS 281.641(1) reprisal/retaliation
28 claim, the hearing officer must only determine whether a state
employee has engaged in protected activity, i.e., has disclosed
information concerning alleged conduct that might constitute
improper governmental action.

Id. at 198, 128 P.3d at 1064 (internal citation and quotation omitted).

Pursuant to NRS 281.611, NAC 281.315, and *Simonian*, Employee bears the burden
of demonstrating he has disclosed improper governmental action as defined by
NRS 281.611(1), that he suffered reprisal or retaliatory action as defined by NRS 281.611(5)
for disclosing the improper governmental action, that the reprisal or retaliatory action took

1 place within two (2) years of the disclosure, and there was a causal connection between the
2 disclosure and the reprisal or retaliatory action.

3 The procedural requirements are modeled after the federal Title VII "burden-shifting
4 analysis." Employee must first establish a prima facie case. NAC 281.315(4)(c). If the
5 Employee can substantiate a prima facie case, the burden then shifts to the employer to
6 show a legitimate business purpose for the alleged retaliatory action. *Id.* Once this burden
7 is met, the Employee may put on more evidence to show the employer's stated reason for
8 the action is pretext. *Id.*

9 In reviewing the Employer's case, the hearing officer must give deference to the
10 decisions of the appointing authority as to what steps will serve the good of public service.
11 *O'Keefe v. DMV*, 134 Nev. Adv. Op. 92, 13 (December 6, 2018).³ NRS 284.020(2) provides
12 that the provisions of Chapter 284 of the Nevada Revised Statutes, which address the State
13 personnel system, "do[] not limit the authority of elected officers and heads of departments
14 to conduct and manage the affairs of their departments as they see fit." NRS 284.020(2).
15 Here, the action to be reviewed was not disciplinary. However, logic requires that a decision
16 to release a probationary employee from probation still must be reviewed under this
17 deferential standard.

18 In reviewing the actions taken by the employer against the employee, it is the duty
19 of the administrative hearing officer to ascertain if there is substantial evidence of legal
20 cause, and to insure that the employer did not act arbitrarily or capriciously, thus abusing
21 its discretion. *Bd. of Chiropractic Exam'rs v. Babtkis*, 83 Nev. 385, 432 P.2d 98 (1967);
22 *Gandy v. State of Nev. ex rel. its Div. of Investigations*, 96 Nev. 281, 601 P.2d 975 (1980);
23 NRS 233B.135(3). Substantial evidence has been defined as that which "a reasonable mind
24 might accept as adequate to support a conclusion," *State, Emp. Sec. Dep't v. Hilton Hotels*,

25
26
27 ³ It is of note that *O'Keefe* provides for a three step standard of review for disciplinary matters
28 related to permanent State employees. Thus, while extrapolating the analysis to this situation
is necessary given the lack of case law related to administrative reviews of release of probationary
employees, it is not entirely appropos. Probationary employees do not have the same due process
protections that permanent employees enjoy.

1 102 Nev. 606, 608, 792 P.2d 497, 498 (1986), citing *Richardson v. Perales*, 402 U.S. 389
2 (1971):

3 Substantial evidence was well defined in *Robertson Transp. Co.*
4 *v. P.S.C.*, 39 Wis.2d 653, 159 N.W.2d 636, 638 (1968):
5 [S]ubstantial evidence [does] not include the idea of this court
6 weighing the evidence to determine if a burden of proof was met
7 or whether a view was supported by the preponderance of the
8 evidence. Such tests are not applicable to administrative findings
9 and decisions. We [equate] substantial evidence with that
10 quantity and quality of evidence which a reasonable man could
11 accept as adequate to support a conclusion . . .

12 *Hilton Hotels*, 102 Nev. at 608 n.1, 792 P.2d at 498 n.1.

13 Thus, the hearing officer cannot substitute his judgment for that of the appointing
14 authority, but rather must simply determine if there is substantial evidence that Bronder
15 was not a good fit, did not follow directions of his superiors, and did not show the aptitude
16 needed to be successful as a Manager with the Construction Division for NDOT. If there is
17 substantial evidence, then there is sufficient legal cause to release an employee from
18 probation. The hearing officer must also determine if there is adequate evidence, under
19 the standard noted above, to support NDOT's assertion that Bronder's removal from the
20 interview list in November of 2017 was not an intentional act of reprisal, but rather a
21 simple, unintentional clerical error.

22 **A. Bronder Cannot Establish that He Disclosed Improper Governmental**
23 **Action by NDOT.**

24 NRS 281.611(1) outlines the type of conduct which constitutes improper
25 governmental action for purposes of a whistleblower complaint. Bronder alleges that he
26 disclosed a "gross waste of public money" when he discussed the high costs of using contract
27 employees to manage highway construction projects. He suggests that the high costs were
28 allowed in the contracts because of relationships between current and former NDOT
employees and current employees hoping for the same type of deal once they retire.

1 This proposition fails because the alleged gross waste of public money Bronder
2 reported was money for contract employees on a federally funded state highway project
3 that was reviewed and authorized by the State Transportation Board at a public hearing
4 conducted on April 10, 2017, following the procedures for approving such contracts. Ex. A,
5 ER 010-017. More importantly, the costs were in compliance with Federal regulations for
6 funding of state highways, that the contracts were audited, and the audits did not uncover
7 any errors or concerns for their terms or for the billing. Exhibit B.

8 These facts demonstrate why the persons Bronder spoke to, Stephen Lani, Deputy
9 Construction Engineer and NDOT Director Rudy Malfabon and Deputy Director Reid
10 Kaiser, had no reason to consider these conversations to be whistleblowing as it is defined,
11 but rather a conversation with an employee (or former employee) of NDOT who did not
12 have sufficient experience or knowledge to appreciate the funding parameters that are in
13 place or the controls imposed by federal funding sources which would foreclose the abuses
14 that Bronder reported. Exhibit C.

15 Because these individuals did not believe that Bronder was exposing any
16 wrongdoing, they had no reason to consider his report a threat and no reason to retaliate
17 against him for raising his questions. Additionally, the evidence will demonstrate that
18 Bronder's concerns were taken seriously and the topic of ensuring compliance with
19 regulations was raised during later NDOT meetings.

20 **B. NDOT Lawfully Released Bronder from Probation**

21 Under Nevada law, a non-permanent, probationary employee may be released from
22 probation "in accordance with regulations adopted by the Commission." NRS 284.290. The
23 regulations adopted provide that a probationary employee may be reject for any lawful
24 reason, as determined by his or her appointing authority. NAC 284.458(1). The regulations
25 further provide that...

26 a probationary employee rejected pursuant to this subsection has
27 no appeal rights or right to file a grievance using the procedures
28 set forth in NAC 284.658 to 284.6957, inclusive, concerning the

1 decision by the appointing authority to reject the probationary
2 employee.

3 *Id.*

4 As noted above, Bronder transferred from a Manager I position in the NDOT District
5 III to a position within the Construction Division. After this voluntary transfer, Bronder
6 had only four months left of his probationary period to demonstrate that he had the
7 necessary skillset and aptitudes to do the Construction Manager job successfully. These
8 two jobs, while classified the same within the State Employment system, have very
9 different skills requirements and responsibilities. This is demonstrated by Bronder's own
10 job application dated November 3, 2017, wherein Bronder lists the different
11 responsibilities for each of the Manager I positions he held with NDOT. Exhibit D, ER 040-
12 041.

13 Bronder was released from probation by the appointing authority, Chief
14 Construction Engineer Sharon Foerschler, because of his failure to interact with employees
15 he was responsible for, for his inability to follow directions, including simple directions
16 about his work schedule, and because he did not effectively integrate into the Construction
17 Office – he was not a good fit. Exhibit E, ER 047-051; *see also* Exhibit A, ER 019-021. Given
18 the appointing authority's broad discretion in retaining or rejecting a probationary
19 employee, the above-stated reasons are more than adequate and are certainly lawful
20 reasons for Bronder's release. Bronder cannot establish that his dismissal from probation
21 was an act of reprisal.

22 **C. Removal of Bronder's Name From an Interview Eligibility List Was a**
23 **Simple Error By a Human Resources Technician, Not An Act of Reprisal.**

24 Human error is not an act of reprisal, particularly when the error is committed by a
25 non-supervisory technician who has no knowledge of upper-management discussions and
26 no vested interest in determining who may or may not be interviewed for a job posting in a
27 remote location. *See generally* NRS 281.611(5).
28

1 In November 2017, a month after Bronder accepted a position with the State
2 Department of Conservation and Natural Resources and less than one-year after he was
3 released from probation, Bronder applied for another NDOT Manager I position in the Elko
4 District. He was originally on the list of eligible candidates presented to the District hiring
5 committee. However, when the District Manager called the HR offices at NDOT to
6 determine if the list was complete and accurate, the District Manager was advised that
7 Bronder was not eligible because he had been dismissed from service and that the District
8 Manager or his staff should code Bronder's name as ineligible. The list was so coded and
9 Bronder learned he was considered ineligible to interview sometime in early January, 2018.

10 NRS 281.611(5) sets out the types of actions that are considered to be
11 reprisal or retaliatory acts under Nevada law. None of the items listed in that
12 subsection are similar to or synonymous with denial of a job interview. Moreover, an
13 act of reprisal is defined in the online Cambridge Academic Content Dictionary
14 (<https://dictionary.cambridge.org/us/dictionary/english/reprisal>) as an act of damage or
15 injury against an enemy in reaction to an act of damage or injury done to you." In other
16 words, it is a conscious action taken for a particular vengeful purpose.

17 A mistaken assumption of fact by a low-level staff member is not a conscious action
18 taken for a vengeful purpose. The removal from the eligibility list was just that, a mistake,
19 not an act of reprisal. The mistake has since been uncovered and rectified and Bronder has
20 not been denied subsequent interview opportunities with NDOT or other state agencies. In
21 fact, Bronder has applied for at least 18 different positions with the State since November
22 3, 2017, and been interviewed for at least three positions with NDOT since that time.
23 Exhibit F, ER052-053.

24 **IV. Bronder's Claims Are Moot or Untimely.**

25 Every judicial tribunal must decide actual controversies by a judgment which can be
26 carried into effect." *National Collegiate Athletic Ass'n v. University of Nevada, Reno*, 97
27 Nev. 56, 57, 624 P.2d 10 (1981). Where the tribunal is unable to grant effective relief with
28 respect to the claim raised, the claim is moot and no order or judgment should be entered

1 to address the claim. *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.2d 572, 574
2 ((2010). While there is an exception to the mootness doctrine for controversies that are
3 capable of repetition or evading review, *Traffic Control Servs. V. United Rentals*, 120 Nev.
4 168, 171-72, 87 P.3d 1054, 1057 (2004), such is not the case here.

5 First, there is little or no likelihood that Bronder will be released from probation in
6 his State employment as he has obtained permanent employee status through his
7 employment with the Department of Conservation and Natural Resources. Second, it is
8 also unlikely that the HR technician who made the clerical error will make that mistake
9 again, as the evidence will show that the individual has reviewed the applicable regulations
10 and has discussed the matter thoroughly with her supervisor to ensure her full
11 understanding.

12 As noted above, Bronder did not file the whistleblower appeal timely as to the release
13 from probation, which should remove the claim from review. Moreover, he has suffered no
14 further injury from the clerical error removing him from the November 2017 interview list.
15 He has had numerous interviews, both with NDOT and with other agencies to which he
16 has applied. The claim is moot. Thus, any order allowed under NRS 281.641 related to
17 these claims would be ineffective.

18 **V. Request For Relief**

19 Based on the foregoing, NDOT requests that the hearing officer deny the appeal in
20 this matter and deny Bronder any relief as outlined in his appeal request. The hearing
21 officer's authority in these matters is limited to issuing an order for the retaliating
22 individual to cease and desist from reprisal. NRS 281.641. As there was no reprisal, either
23 in May 2017, when Bronder was lawfully released from probation, or in November 2017,
24 when an HR Technician erroneously advised that Bronder should be listed as ineligible for
25 interview in an NDOT interview list, there should be no relief awarded. The clerical error
26 was unintentional and clearly not motivated by any animus toward Bronder for his
27 purported whistleblowing activities.

1 **VI. Probable Witness List**

- 2 1. Stephen Lani, Deputy Constructon Engineer, Nevada Department of
3 Transportation. Mr. Lani will testify about the meeting he had with Bronder,
4 and related matters
- 5 2. Sharon Foerschler, Chief Construction Engineer, Nevada Department of
6 Transportation. Ms. Foerschler will testify about Bronder's performance and her
7 reasons for releasing him from probation.
- 8 3. Reid Kaiser, Deputy Administrator, Nevada Department of Transportation. Mr.
9 Kaiser will testify about the meeting with Bronder in July, 2017.
- 10 4. Boyd Ratliff, Elko District Manager, Nevada Department of Transportation. Mr.
11 Ratliff will testify about Bronder's performance in District III and his call to HR
12 regarding the interview list in November, 2017.
- 13 5. Tonya Sieben, Human Resource Officer, Nevada Department of Transportation.
14 Ms. Sieben will testify about her advice to District III about Bronder's eligibility,
15 her reason for giving such advice and her subsequent review of the decision with
16 her supervisor and other related matters.

17 **VII. Exhibits**

- 18 Exhibit A: Bronder Whistleblower Appeal and attachments
- 19 Exhibit B: Audit Results for CA Group, Inc. Agreement
- 20 Exhibit C: Emails, Notes, and Memo Related to July 14, 2017 Meeting
- 21 Exhibit D: Bronder Job Application, dated November 3, 2017
- 22 Exhibit E: Email and Notes Regarding Bronder Performance in Probation

23 ///

24 ///

25 ///

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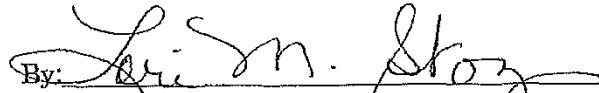
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1 Exhibit F: Bronder NVAPPS page (screenshot) Regarding Applications Status

2
3 DATED: January 10th 2019.

4 AARON D. FORD
5 ATTORNEY GENERAL

6
7 By: 

8 LORI M. STORY (Nevada Bar No. 6835)
9 Senior Deputy Attorney General
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11 Carson City, NV 89701
12 (775) 684-1114 (phone)
13 (775) 684-1145 (fax)
14 Lstory@ag.nv.gov

15 Attorneys for Nevada Department
16 of Transportation
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1 CERTIFICATE OF SERVICE

2 Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that,
3 on the 10th day of January, 2019, service of the NEVADA DEPARTMENT OF
4 TRANSPORTATION'S PREHEARING STATEMENT was made this date by
5 depositing a true copy of the same for mailing, first class mail, at Carson City, Nevada, and
6 via e-mail, addressed as follows:

7 Paul H. Lamboley (Via U.S. mail and E-mail): phlamboley@aol.com
8 Appeals Officer
9 State of Nevada
10 Department of Administration / Hearings Division
1050 E. Williams Street, Ste. 450
Carson City, Nevada 89701

11 Tasha Eaton (Via U.S. Mail and E-mail): Tasha Eaton: teaton@admin.nv.gov
12 Supervising Legal Secretary, Appeals Office
13 Nevada Department of Administration, Hearings Division
1050 E. William Street Ste 450
14 Carson City, NV 89701

15 Thomas J. Donaldson (Via U.S. Mail and E-mail): tdonaldson@dylawrence.com
16 Dyer Lawrence, LLP
17 2805 Mountain Street
18 Carson City, NV 89703
(775) 885-1896 office
(775) 885-8728 facsimile

19
20 
21 Sally A. Bullard, LS II
22 An employee of the Office of Attorney General
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Date Received:

**APPEAL OF
"WHISTLEBLOWER" RETALIATION
UNDER THE PROVISIONS OF NRS 281.641**

This form is required for a state officer or employee or former state officer or employee to request a hearing to appeal action which he or she believes was reprisal or retaliation due to his or her disclosure of improper governmental action. This form is not to be used to report improper governmental action.

I. Appellant Information (required section)

Name: John Bronder

Mailing Address: 45 Desert Willow Way
Reno, Nevada 89511

RECEIVED
JAN 16 2018

Contact Phone: 775-772-8968

Email: jbronder@sbcglobal.net

**NEVADA DIV. OF HR MANAGEMENT
GRIEVANCES APPEALS
CARSON CITY, NEVADA**

Employee I.D. #: 60088

Department/Agency at time of Action: Department of Transportation

II. Whistleblowing Activity (required section)

Please attach a summary which identifies or describes the improper governmental action, as described in NRS.281.611, that you allege was carried out by a state officer or employee, including the date of the disclosure, to whom the disclosure was made, and any state laws or regulations that you believe were violated.

III. Appealed Action (required section)

What was the alleged reprisal or retaliatory action you are appealing and the date or effective date of the action?
Dismissal from NDOT and ongoing reprisal evidenced by removal from the second active list for Manager I in District III after ranking #1 on first recruitment. Result appeared in my NEATS profile the morning of January 5, 2018.

Please attach a summary which explains why you believe the action you are appealing was reprisal or retaliation for your disclosure of improper governmental action. Please include:

- a) A chronology of events and facts which support your allegation that the action you are appealing was based on reprisal or retaliation for your disclosure of improper governmental action.
- b) Documentary evidence which supports your statements.

Is the date of the alleged reprisal or retaliatory action you are appealing within two years of the date you disclosed information concerning improper governmental action? ☒ Yes ☐ No

Note: The appealed action must be within two years of the date of disclosure of improper governmental action.

The remedy I seek is:

☐ To have an order issued directing the proper person to desist and refrain from engaging in the reprisal or retaliatory action.

☒ Other: Restore credit for 11 months of probation served as a Manager I (06,224). Restore sick leave forfeited upon termination. Restore compensation level to grade 43, step 8.

Note: "Other" remedies may not be within the jurisdiction of the hearing officer to grant.

IV. Appellant Representation (required section)

You may represent yourself or be represented by an attorney or other person of your choosing. A representative may be designated at a later date. I choose to:

☐ Represent myself

☒ Designate the following representative to act on my behalf during the course of this appeal:

Name: To be named at a later date.

Phone:

Address:

Fax:

Email:

V. Signature (required section)

I hereby request a hearing to determine whether the action described was reprisal or retaliation for disclosing information of improper governmental action and I affirm that the information provided is true and correct.

Appellant Signature: John A. Brander

Date: January 16, 2018

Appeal Instructions

General: A state officer or employee or former state officer or employee is eligible to file an appeal. Attachments to this form may be provided however, all evidence and back-up documents need not be provided at this time; prior to the hearing, you will receive a request for any supporting material. If you have received a Specificity of Charges or written notice of involuntary transfer, please attach it to this request. Notification of a hearing will be sent to you or your designated representative by regular mail. The appeal procedures and statements made on this form do not include all of the rights available to an appellant. It is advisable to review NRS 281 and NAC 281 prior to filing an appeal. Appeal hearings are open to the public and decisions by a hearing officer are public information.

When to File an Appeal: Nevada law NRS 281.641 states, "If any reprisal or retaliatory action is taken against a state officer or employee who discloses information concerning improper governmental action within 2 years after the information is disclosed, the state officer or employee may file a written appeal with a hearing officer of the Personnel Commission for a determination of whether the action taken was a reprisal or retaliatory action."

Your appeal must be filed within 10 working days after the date the alleged reprisal or retaliatory action took place. If your appeal is filed late, the hearing officer may dismiss it as untimely. The date of filing will be the date the appeal is postmarked, or the date of the fax, email, or date of receipt, if you personally deliver it to the Division of Human Resource Management.

Where to File an Appeal: The request may be submitted by mail, email, fax or hand delivery. Please submit the appeal to:

Administrator, Division of Human Resource Management
c/o Employee and Management Services
100 N. Stewart St., Suite 200
Carson City, Nevada 89701-4204
Fax (775) 684-0118 Phone (775) 684-0135
Email: HearingClerk@admin.nv.gov

NRS 281.641 states, "Reprisal or retaliatory action against state officer or employee who discloses improper governmental action: Written appeal; hearing; order; negative ruling may not be based on identity of persons to whom disclosure was made; rules of procedure.

1. If any reprisal or retaliatory action is taken against a state officer or employee who discloses information concerning improper governmental action within 2 years after the information is disclosed, the state officer or employee may file a written appeal with a hearing officer of the Personnel Commission for a determination of whether the action taken was a reprisal or retaliatory action. The written appeal must be accompanied by a statement that sets forth with particularity:

(a) The facts and circumstances under which the disclosure of improper governmental action was made; and

(b) The reprisal or retaliatory action that is alleged to have been taken against the state officer or employee. The hearing must be conducted in accordance with the procedures set forth in NRS 284.390 to 284.405, inclusive, and the procedures adopted by the Personnel Commission pursuant to subsection 4.

2. If the hearing officer determines that the action taken was a reprisal or retaliatory action, the hearing officer may issue an order directing the proper person to desist and refrain from engaging in such action. The hearing officer shall file a copy of the decision with the Governor or any other elected state officer who is responsible for the actions of that person.

3. The hearing officer may not rule against the state officer or employee based on the person or persons to whom the improper governmental action was disclosed.

4. The Personnel Commission may adopt rules of procedure for conducting a hearing pursuant to this section that are not inconsistent with the procedures set forth in NRS 284.390 to 284.405, inclusive.

5. As used in this section, "Personnel Commission" means the Personnel Commission created by NRS 284.030."

NAC 281.305 states, "Written appeal by officer or employee who claims retaliatory action was taken against him or her.

1. A state officer or employee who claims a reprisal or retaliatory action was taken against him or her for disclosing information concerning improper governmental action may file a written appeal pursuant to NRS 281.641 with a hearing officer of the Personnel Commission. The appeal must be:

(a) Filed within 10 workdays after the date the alleged reprisal or retaliatory action took place.

(b) Submitted on a form provided by the Division of Human Resource Management of the Department of Administration.

2. The hearing officer may reject a form that is incomplete or otherwise deficient as insufficient to commence the appeal."

NRS 281.611 states in part, "Definitions. As used in NRS 281.611 to 281.671, inclusive, unless the context otherwise requires:

1. "Improper governmental action" means any action taken by a state officer or employee or local governmental officer or employee in the performance of the officer's or employee's official duties, whether or not the action is within the scope of employment of the officer or employee, which is:

(a) In violation of any state law or regulation;

(b) If the officer or employee is a local governmental officer or employee, in violation of an ordinance of the local government;

(c) An abuse of authority;

(d) Of substantial and specific danger to the public health or safety; or

(e) A gross waste of public money."

APPEAL OF "WHISTLEBLOWER" RETALIATION UNDER THE PROVISIONS OF NRS 281.641

II. Whistleblowing Activity

Please attach a summary which identifies or describes the improper governmental action, as described in NRS.281.611, that you allege was carried out by a state officer or employee, including the date of the disclosure, to whom the disclosure was made, and any state laws or regulations that you believe were violated.

The improper governmental action was in violation of NRS 281.611.1(e) "A gross waste of public money" and NRS 281.611.5(j) "Dismissal." The action occurred on March 6, 2017 at the negotiation meeting with the consultant for Contract 3660. Both NDOT's Assistant District Engineer Rich Bosch and Assistant Construction Engineer Steve Lani approved extremely high labor rates that would result in excessive compensation to the consultant of approximately \$500,000 to \$700,000 on the \$2.1 million contract. I disclosed this to Assistant Construction Engineer Steve Lani on April 10, 2017 after hearing Governor Sandoval voice his concern with the high cost of this contract at the Transportation Board Meeting. On May 5, 2017, I was abruptly dismissed from employment with NDOT without warning or reason. Other state laws that I believe were violated are NAC 625.510 Fundamental principles. (NRS 625.140) A licensee shall uphold and advance the honor and dignity of the profession by maintaining high standards of ethical conduct. In particular, a licensee shall 1. Be honest and impartial, and serve his or her employer, clients and the public with devotion; and NAC 625.530 Relations with employers and clients. (NRS 625.140) In a professional engineer's or land surveyor's relations with his or her employers and clients, he or she shall: 1. Act in professional matters as a faithful agent or trustee for each employer or client; 2. Act fairly and justly toward vendors and contractors, and not accept from vendors or contractors any commission or allowances, directly or indirectly.

III. Appealed Action

Please attach a summary which explains why you believe the action you are appealing was reprisal or retaliation for your disclosure of improper governmental action. Please include:

- a) A chronology of events and facts which support your allegation that the action you are appealing was based on reprisal or retaliation for your disclosure of improper governmental action.
- b) Documentary evidence which supports your statements.

The action occurred on March 6, 2017 at the negotiation meeting with the consultant for Contract 3660. See Exhibit A for the Memo summarizing the negotiation meeting. The negotiations were conducted by Assistant District Engineer Rick Bosch and Assistant Construction Engineer Steve Lani with the consultant (CA Group). An excel spreadsheet was provided by CA Group showing the build-up of labor and equipment rates. NDOT's practice is to pay the actual employee rate plus the federally audited company overhead rate. For CA Group, they showed their overhead to be 150.00%. Therefore, NDOT compensates the consultant 250% of the employee base labor rate for each billable hour. A negotiation of labor rates did not occur at this meeting and blanket acceptance was given by the two NDOT employees. The CA Group personnel in attendance included the proposed Assistant Resident Engineer, Peter Booth. This individual retired from NDOT as the Assistant District Engineer whose successor, Rich Bosch, was involved in this negotiation. He also directly supervised all District II Resident Engineers at which time Steve Lani worked for him. The close working relationship of these 3 individuals brings into question their ability to remain unbiased and act fairly on behalf of the State. The NDOT employees are well positioned to follow in the former supervisor's footsteps upon their retirement from NDOT. They will, however, require their successors at NDOT to perpetuate the inflated labor rates.

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The consultant was contracting with NDOT to provide construction crew augmentation for Crew 910 including one Assistant Resident Engineer (Grade 40) and 8 Inspectors and Testers (Grades 30 and 33). The consultant's base labor rates were markedly higher than the comparable State positions and higher than the local industry standards. In the case of CA Group's proposed Assistant RE, his base labor rate was approximately 86% higher. He was over-qualified and over-compensated for the position of Assistant RE being that he retired as Assistant District Engineer (Grade 45). Given that he was expected to support the Resident Engineer (Grade 43) with little oversight, the labor rate would still be 63% higher than the NDOT Resident Engineer on Crew 910. In broad perspective, his labor rate is even 24% higher than the Director of NDOT. The Inspectors and Testers labor rates ranged from 25% to 60% higher than comparable NDOT positions.

Labor made up approximately 90% to 95% of the overall contract cost. Of the total contract cost of \$2,085,151, labor was approximately \$1.9 million. Based on the higher labor rates identified above, a gross overpayment was approved to CA Group of approximately \$500,000 to \$700,000. An independent audit of this contract will prove this. An audit of other contracts will prove that this has been occurring on most contracts, especially those that are staffed or owned by NDOT retirees.

During the April 10, 2017 Transportation Board Meeting, the Governor specifically questioned the high cost of this contract. See Exhibit B for pages from the minutes of that meeting. I viewed this meeting from my office in the Construction Division. I heard the concern of the Governor and listened to his questions and the responses from the NDOT Director and District Engineer. I felt that the responses to the Governor's questions were incomplete and misleading. I promptly went to the office of Assistant Construction Engineer Steve Lani and expressed my concern that NDOT was approving excessive labor rates for the consultant's employees. He dismissed that notion and said that these rates were lower than they have seen in the past.

Two weeks later, on the afternoon of April 25th, I was told by my supervisor, Jeff Freeman, that my performance evaluation needed to be done. I was about 2 hours away from leaving on vacation and felt this was hurried. The result of the evaluation was "meets standard." See Exhibit C for the NPD-15. There were two items that were identified that did not meet standard. Of the 10 weeks that I worked in the Construction Division, I spent 3 weeks in required conferences and training. I was also tasked with helping write the Construction Manual which involved an 8-hour working meeting almost every Friday with review and editing time during the week. I was also asked on my third week to learn another employee's job to take it over upon their retirement on May 5th. I worked very hard to fulfill these other assignments but was only left about 16 hours a week for 7 weeks to do my job.

Upon the day I returned from vacation, May 5th, I was called in to Chief Construction Engineer Sharon Foerschler's office along with Steve Lani as witness and abruptly dismissed from probation without any forewarning. See Exhibit D for the letter. In that meeting, I asked if I could transfer back to District III to the position I held for my first 8-1/2 months with NDOT since it was still unfilled. The Chief Construction Engineer said that that was not an option that they had considered. Having me removed from employment with NDOT was severe retaliation considering that all they said was that they were disappointed. I believe that my knowledge of their actions jeopardized their future plan and it was necessary to remove me completely from NDOT.

The Transportation Board Meeting on June 12, 2017 had more discussion on the high cost of consultants. See Exhibit E for pages from the meeting minutes. Member Almberg is the owner of a private engineering consulting firm and is experienced with setting labor rates. He was concerned that the overhead rates of the different consultants ranged from 110% to 190% and that choosing the consultant with a high overhead rate would cost

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the state more. Governor Sandoval also questioned why NDOT would chose the high-overhead company. NDOT did not have a good answer for that.

I scheduled a meeting with the Director of NDOT which occurred on July 14, 2017. The subject was to discuss the concern that I had from the April 10th Transportation Board Meeting. The Director, Rudy Malfabon, asked the Assistant Director of Operations, Reid Kaiser, to sit in on the meeting since he oversees the Construction Division. I discussed in detail why I was concerned about the high consulting fees and specifically asked him if he thought that a base salary of \$168,000 seemed high for an Assistant Resident Engineer. He agreed but said that NDOT had looked into this several years ago. I also explained to them that this incident was why I believed I was dismissed. Reid Kaiser said he was told that I wasn't a good fit. He also offered to speak with other District and Division Chiefs so that my applications for rehire would not be rejected due to my recent dismissal from the Construction Division.

The Transportation Board Meeting on August 14, 2017 had discussion on the exclusive list of consultants that always seem to be selected. See Exhibit F for pages from the meeting minutes. Member Skancke has been on the board for several years. He was very upset that the same firms seem to get all the NDOT contracts. NDOT hands out a lot of money and it should be spread around to all qualified firms and not just a handful. What I have seen time and time again is that only those firms that are owned or staffed to a large degree with retired NDOT employees will be selected for contracts with NDOT. These firms, knowing that they have the inside track to NDOT contracts, sets their rates a minimum of 25% higher than industry standards.

A position for Resident Engineer in District III was posted on Oct. 10, 2017 and I applied for it on Oct. 24th. I was determined eligible and was ranked #1 on the list. On Oct. 31st, I learned that the recruitment was cancelled and a new recruitment was posted. I again applied for this position on Nov. 3rd. The 2 week period was extended for an additional 2 weeks and closed on Nov. 28th. I was again determined eligible but this time the list was unranked. I expected that my experience and success in this position would ensure me an interview since the number of applicants is rarely at least 5 in Elko. It was on January 5, 2018 that the result was shown as "Removed per NAC 284.374." This further indicates that reprisal by NDOT is continuing against me for my exposure and knowledge of the improper governmental action of a gross waste of public money.

EXHIBIT A
MEMORANDUM
NEGOTIATION SUMMARY OF MARCH 6, 2017

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STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION

MEMORANDUM

March 13, 2017

TO: Reid Kaiser, Assistant Director

FROM: Lisa Schettler, Project Manager

SUBJECT: Negotiation Summary for RFP 617-16-040 Construction Engineering Services for Augmentation of Crew 910 to oversee the construction of Contract 3660, Project No. SPSR-0648(009) located on SR 648, Glendale Avenue, from Kietzke Lane to McCarran Boulevard in Washoe County.

A negotiation meeting was held at the NDOT District 2 Office in Reno on March 6, 2017, with Chad Anson and Peter Booth from CA Group, Inc. and Lisa Schettler, Stephen Lani, Rick Bosch, John Bronder and Pamela Kennedy of the Nevada Department of Transportation (DEPARTMENT or NDOT) in attendance.

The DBE goal for this agreement has been established at one and one-half percent (1.5%).

The scope of services that are to be provided by the SERVICE PROVIDER was reaffirmed by both parties at the outset.

The SERVICE PROVIDER shall provide one (1) Assistant Resident Engineer, one (1) part-time Public Information Officer (PIO), two (2) Inspectors level IV, two (2) Inspectors level III, four (4) Testers, and two (2) nuclear gauges. The SERVICE PROVIDER shall also provide one (1) Registered Professional Archeologist and may provide a Cultural Resource Field Monitor as required.

CA Group, Inc. is the prime consultant and has teamed up with the following subconsultants:

- Construction Materials Engineers, Inc. (Inspection and Testing Services)
- WCRM (Cultural Resource Management)
- Taylor Made Solutions (PIO)- Certified DBE

The DEPARTMENT's estimate was \$2,097,541.88 including labor and direct expenses.

The SERVICE PROVIDER's original estimate was \$1,810,538.15

The negotiations yielded the following:

1. Adjusted the augmentation staffing durations and levels based upon current estimated project construction and close out schedule.
2. Agreed estimated overtime for the field staff should be increased to 35% to align with the currently submitted contractor's construction schedule.

3. Reiterated that hours worked by the Service Provider are as needed to provide sufficient project oversight and are at the direction of the Resident Engineer.
4. We determined the original straight-time hourly billing rates for staff proposed by CA Group were reasonable, however, the original proposed overtime hourly billing rates appeared to be high and calculated inaccurately. CA Group lowered the overtime billing rates on average by \$27.63 per hour.
5. The original fee proposal submitted by CA Group included only one rate for cultural resource monitoring staff, although their proposal included both a field monitor approved as a Crew Chief by the BLM to work in the field and a Registered Professional Archaeologist to be available for oversight responsibilities and to provide expertise when cultural resources are identified in the field by the Crew Chief. CA Group provided two separate rates for the two positions in their subsequent fee proposal with the field monitor position billable rate decreased by \$42.31 per hour.
6. CA Group agreed to reduce the monthly vehicle rate for field staff from \$1,850 to \$1,700 per vehicle.
7. CA Group agreed to reduce the monthly cell phone rate for field staff from \$100 to \$50 per phone.
8. We reiterated the need for iPads to allow the field inspectors to access the Mobile Inspector™ program and a computer for the Assistant Resident Engineer access to the Field Manager™ Program currently used by NDOT. We advised CA Group that the use of the Mobile Inspector™ program by field inspectors did not require a monthly data plan. CA Group altered their fee proposal to provide technology equipment at a one-time lump sum rate rather than a monthly fee.
9. The final total negotiated cost for this agreement, including labor and direct expenses is \$2,085,151.00.

Reviewed and Approved:

DocuSigned by:



Assistant Director

EXHIBIT B
TRANSPORTATION BOARD MEETING MINUTES
PAGES 39-45 OF APRIL 10, 2017

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Transcript of Nevada Department of Transportation
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April 10, 2017

on the motion. Hearing none, all those in favor please say aye. [ayes around] Those opposed say nay. That motion passes unanimously. Again, congratulations to all those involved. We look forward to the successful completion of those projects.

Let's move to Agenda Item No. 6, Mr. Nellis, approval of agreements over \$300,000.

Nellis: Thank you Governor. There are three agreements under Agenda Item No. 6 that can be found on Page 3 of 38 in your packet. Line Item No. 1 is with Granite Construction in the amount of \$684,900. This is for reconstructing and widening Charleston Boulevard in the City of Las Vegas, at the existing I-15 Interchange.

Item No. 2 is with Diversified Consulting Services. This is in the amount of \$1,795,644.05; to provide full construction administration services including professional and technical engineering services for Contract 3665 located on I-80 in Lyon County.

Lastly, Item No. 3, with CA Group is in the amount of \$2,085,151 to perform professional and technical engineering services for Contract 3660, located on SR-648 in Washoe County.

With that Governor, that concludes Agenda Item No. 6. We'd be happy to take any questions on these three agreements.

Sandoval: Thank you Mr. Nellis. I guess just a little more detail on Contract No. 3.

Malfabon: Oh, I'll take that. Reid Kaiser is over at the Legislature still. This is for construction management augmentation. In some cases, we still have a resident engineer but their staff are spread thin through several projects in the region. They need construction augmentation. The recommendation from the selection committee is for and negotiation of the contract with CA Group to augment our construction staff for those engineering technicians that do the testing, the inspection services and administration on the contract.

Sandoval: Is this typical, \$2 million for 13-months?

Malfabon: We only pay what we actually use Governor, but it's usually a negotiated rate, which we—the Construction Division, when they negotiate those contracts looks at the salaries of the individuals. They look at the overhead rates, which kind of rolls up into the actual cost. We only pay for the hours of service used by those

Transcript of Nevada Department of Transportation
Board of Directors Meeting
April 10, 2017

folks, for the efforts that they provide to manage the project. It could be that the estimate might be high but we only pay for what we actually use.

Sandoval: Yeah, that's a lot of hours to—

Malfabon: Yes.

Sandoval: --to get to \$2 million.

Malfabon: Typically, what we see on construction engineering, it can be anywhere from 10% to 20% depending on whether we do it in-house and what type of work it is and whether it's augmented or full administration.

Dyson: Governor, Thor Dyson. On this particular job with the Glendale job, just so you're aware, it's a 24-hour a day job. For 24-hours a day, six or seven days a week, we're going to need staff, nighttime and day time. Granite has every intention of knocking out this job as quickly as possible. We're going to be staffing it and trying to knock it out this year. And we can't do it with the resources we have. So that's what you're seeing.

Sandoval: Questions from other Board Members? Member Savage.

Savage: Thank you Governor. A question on Agreement No. 1. It has to do with the funding and the timing. I know this is the preconstruction phase. The overall timeline and the funding—the funding notes say 2017, 2018, 2019, 2020, completing in 2020. Are there actually four or three years of actual preconstruction? And, what is the overall construction budget?

Malfabon: I'll do my best to respond to that but I might need some assistance from staff. John Terry is heading a AASHTO Committee on technical training this week. The timeframe for the preconstruction services is less than that. We anticipate that most of the work will be done in the first couple of years, to design the interchange in Southern Nevada. The construction might need some help from Rick, our Project Manager, on the construction estimate.

Splawinski: Rick Splawinski, Project Management Division. That number is being developed now when the project is in the environmental phase. The best number we're sitting on right now is probably \$31 million. Again, early or midway in the environmental phase for that project. As far as time goes, this agreement extending through 2020 is set up to be—to allow overlapping, multiple GMPs, so the preconstruction services could be going on maybe for the last GMP while

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construction had already started. Maybe even more so than what you saw on the SR-28 Bike Path Project, where there was a small GMP while final design continued. There may be even more than two GMPs where the preconstruction services covered by this agreement would carry on until the very last GMP went out.

Savage: That answers my question, because of the timing. So, the objective to start construction is what year?

Splawinski: 2019.

Savage: 2019.

Splawinski: So, at a minimum, the preconstruction services will go through 2019, 2020 might be an overlap year where the preconstruction services were still addressing the final GMPs and then 2020 is with any good fortune, wouldn't be needed for preconstruction. The agreement would extend that long if needed.

Savage: Okay. That satisfies my questions, thank you Rick. Thank you Governor.

Sandoval: Mr. Controller.

Knecht: Thank you Governor. I think part of the problem we're all having here is if you look at Page 3 of 38, Attachment A, you look at the amounts over here on the left and the notes on the right, you see that there's \$685,000 for Item 1, \$1.8 million for Item 2 and \$2.085 for Item 3. Then you go read the notes and the first note for Item 1 seems to say, well it says, the project consists of reconstructing and widening Charleston Boulevard, etc. You read the note for No. 2, it says, provide full construction administration services and as we heard, No. 3 is for augmentation. What it looks like, before you check the details in back, is like, we're going to pay \$685,000 for the real work and we're going to pay \$1.8 million and \$2.1 million for administration and augmentation. Then when you check the real work under No. 1, it says CMAR Preconstruction Services. So, it begins to make a little sense to me, but the way the notes versus the amounts were, it looked like the tail was wagging the dog in that we seem to be, according to those notes paying a lot for administration and augmentation and not so much for actual real field work.

Once I got through the whole thing, I was satisfied and I was satisfied especially with the answer that Thor Dyson gave and the other people here. The presentation was a touch confusing. Thank you.

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- Malfabon: Mr. Controller, we'll try to do better on those notes because we get that point that we could've been more clear in the notes so that it's more descriptive of what the actual contract is for. It was more of a—for instance, in the first one, it's more a description of the construction phase which is not before you for approval. It's the preconstruction services phase and that was not that clear unless you read the back-up materials. We'll take that in to consideration and do a better job in the future on reviewing those notes to make sure that they're applicable to what's before you so that you'll still have the back-up information but the notes are more explicit about what's before you today.
- Knecht: I thought you were just giving us a test.
- Sandoval: Other questions or comments. Any questions from Southern Nevada, Tom?
- Skanecke: None here Governor.
- Sandoval: And just a follow-up Rudy, on No. 3, when you say that's a maximum price, I understand that. So, is Thor or somebody else scrutinizing those contracts to make sure that the billings are good?
- Malfabon: Yes, Governor. What I noticed is that, they have some additional staff in there if needed. So, as construction activities occur on all of the district crews, Thor and his Assistant District Engineer for Construction, Rick Bosch, would determine whether they can move staff around to save some costs on the construction management of the project. We still want to just meet all the obligations for oversight of the project to make sure it's done correctly and paid correctly. Definitely, Thor and his staff would manage that part of it and make sure that they're aware of any costs. They need the back-up from the consultant, if needed. There's about four positions that are 'if needed'. There's a core work group of about six individuals with those four if needed. They manage that, Governor, on a day-to-day basis and stay in touch with the NDOT staff that are assigned to the project that are going to be augmented with the consultant.
- Sandoval: I don't mean to be nit-picky, but there's 80 hours in there for a PIO, outsourcing a PIO.
- Malfabon: Yes, and I'm sure Thor is going to say, there's so many businesses along there that we want to have more direct outreach with them. We've really stretched our PIO staff in the North, thin with some of the duplicate responsibilities during the legislative session. Obviously, Sean will be back after the session, he's roaming

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the halls all the time at the Legislature. Thor if you want to kind of address that, I know that it has to do with the extensive amount of public impact that we're going to have to traffic and business owners along this stretch.

Dyson: Thor Dyson. Governor, we've got a lot of businesses along Glendale there, a lot of very important businesses and we want to have very timely and fluid coordination and communication with the subcontractors, the business owners, emergency management, fire/police, that kind of group there. We also have some other projects in the area. RTC has their Fourth Street job, it's a \$38 million project to really completely redo Fourth Street. We've got our other project with Kietzke, the safety project you had seen earlier. There's a lot of things happening in that area and an upcoming Kietzke project, safety project for the next year. We've got one now. We've got one coming up. We've got the Fourth Street, we've got Glendale.

This is a pretty serious project involving a lot of business owners and we have found that we can eliminate a lot of complaints, hiccups or whatever you want to call it on weekends, nights because it's a complicated project. It's a very—it's a massive overhaul. We're going deep. We're going down a couple of feet. I know business owners have come in and talked to me already, Maverick wants to start doing some development. There's other potential development going on. They're coordinating as well, with our project managers right now and we need to have this coordination.

We also spent a lot of time, PIO hours on the I-80 design-build when we were shutting and closing interstate ramps and affecting businesses owners throughout Reno. It's money worthwhile. It really has value and it can really reduce a lot of headaches.

Sandoval: I understand that. As I said, I don't want to micromanage this. Also, Taylor Made Solutions is the subcontractor, which we have no real control over and they speak for us. They're going to be representing the Nevada Department of Transportation in the State. I just want to make sure that they're familiar with all of that and make sure that they're conveying the correct message. I'm not being critical of the expenditure, it's more that we have our PIOs in house that know the drill. When you start to outsource that, I wonder if they're as familiar with the processes and procedures of this Department.

Dyson: So, this particular subcontractor, Kathleen Taylor, they have done this before for us. Many years ago she was a former employee for the State of Nevada, for

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NDOT. When they go to attend, or when they go to do a press release or talk with business owners, they're involved, they're in all the contractor meetings, the coordination meetings. They are acutely familiar with every step of the contractor's operations. Then they put that together. Our PIO as well as our construction people, the district administration, we will review what's being kicked out to make sure we have quality control and that the message being worked on, presented and then submitted and distributed out to all those affected is the accurate one. We take that very seriously. I hate to cry wolf and the wolf never shows up.

This is a tough project. We're prepared to go to hell and come back for a good purpose. We'll do it.

Sandoval: I appreciate your being blunt. I mean, as you appreciate and you've said, Kietzke Lane may have the highest concentration of small businesses in Northern Nevada or pretty close. This is going to affect a lot of folks' livelihoods. This has to be done right and just while I'm on that, I say amen to what Member Savage said in terms of this road being a Cadillac now. It is time to turn it over and to relinquish it and for the County to take that. It will be, not in as good of shape, the best shape that it's ever been.

Dyson: So, it's the City of Sparks and we've talked to them in the past over the last 10-12 years, there was a lot of interest in relinquishing the road and them accepting it. Then the recession hit and things kind of got difficult for everyone involved. The road is still in NDOT's purview and responsibility. There are a lot of big, major businesses, Caterpillar, Cashman, Granite Construction happens to be on that road as well.

Sandoval: Why aren't they doing it for free then... [laughter]

Dyson: There's a lot of businesses, not just along Glendale, but the side streets, including some of my resident engineer offices we rented. It may not seem like a lot of small businesses on Kietzke, but we want to be very careful and very clear on how we're doing things. We want to be very communicative. If we're not communicating enough, if we're sick and tired of communicating, then we need to start communicating more. We'll do that through our PIO Group and we'll monitor it closely with our personal PIOs with NDOT overseeing the consultant PIO.

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Sandoval: I have complete confidence in you all. I mean, you do a great job. My point was more akin to what Member Savage said is, you know, obviously, historically, these were state highways and time has moved on. Now, essentially we are subsidizing the local governments in terms of improving and maintaining these roads. That was part of the conversation that we had before in terms of putting them up to pristine condition and then relinquishing them because they are local roads. Again, that's probably more of a political statement than anything else, but I just want to make sure that this goes smoothly. You mentioned some of the biggest businesses in Washoe County are going to be affected by this. I appreciate your hard work.

Dyson: Thank you.

Sandoval: All right, other questions or comments with regard to Agenda Item No. 6? Mr. Nellis, do you have anything else?

Nellis: No, Governor, that concludes Agenda Item No. 6.

Sandoval: If there are no further questions or comments, the Chair will accept a motion for approval of the agreements over \$300,000, as presented in Agenda Item No. 6.

Savage: So moved.

Knecht: Second.

Sandoval: Member Savage has moved for approval. The Controller has seconded the motion. Any questions or discussion on the motion? Hearing none, all those in favor, please say aye. [ayes around] Those opposed say no. That motion passes unanimously. Let's move on to Agenda Item No. 7, Mr. Nellis.

Nellis: Thank you Governor. There are two attachments that can be found under Agenda Item No. 7 for the Board's information. Beginning with Attachment A, there are four contracts and five emergency contracts on Pages 4 and 5 of 17 in your packet.

The first project is located on US-93 in Elko and White Pine Counties, for chip seal and seal coat. There were two bids and the Director awarded the contract to Sierra Nevada Construction in the amount of \$883,007.

The second project is located on SR-445, Pyramid Highway in Washoe County to construct acceleration and deceleration lanes. There were four bids and the Director awarded the contract to A&K Earthmovers in the amount of \$694,000.

EXHIBIT C
NPD-15 FROM APRIL 24, 2017

ER 018

000325

000340

Agency Use Only

RECEIVED

APR 27 2017

HUMAN RESOURCES DIVISION
DEPT. OF TRANSPORTATION

STATE OF NEVADA

EMPLOYEE APPRAISAL & DEVELOPMENT REPORT

*The contents of this report on performance must be discussed between the employee and his or her supervisor as described in NRS 284.337 and NAC 284.470

Central Records Use Only

RECEIVED

MAY 16 2017

DEPT. OF ADMIN
DHHR - RECORDS

1. Employee Name: Last Bronder First John Initial N	
2. Class Title: Manager I, P.E.	3. Employee ID #: 60088
4. Dept/Div/Section: NDOT C040 Construction	5. Date Evaluation Due: 5/6/17
6. Agency # (3 digits): 800 Home Org # (4 digits): C040 Position Control #: 040004	7. Date Next Evaluation Due: 6/6/18
8. Probationary/Trial Period (check one): 6 month Probation/Trial: <input type="checkbox"/> 2 nd month <input type="checkbox"/> 5 th month <input type="checkbox"/> Other 12 month Probation/Trial: <input type="checkbox"/> 3 rd month <input type="checkbox"/> 7 th month <input checked="" type="checkbox"/> 11 th month <input type="checkbox"/> Other OR Permanent (check one): <input type="checkbox"/> Annual <input type="checkbox"/> Other	
9. Work Performance Standards: <input checked="" type="checkbox"/> are an accurate reflection of the position <input type="checkbox"/> will be revised to reflect changes	
10. Overall Rating from Page 2, Number 14 (check one): <input type="checkbox"/> Does Not Meet Standards (DMS)* <input checked="" type="checkbox"/> Meets Standards (MS) <input type="checkbox"/> Exceeds Standards (ES) * If a rating of "Does Not Meet Standards" is given, another evaluation must be completed within 90 days. The rating may affect adjustments in salary based on merit (NAC 284.194).	
Rater's Printed Name: Jeffrey Freeman	
Rater's Signature & Title: <i>[Signature]</i> Assistant Const Eng Date: 4/24/17 (mm/dd/yy)	
11. Additional Supervisory Review (optional): <input type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)	
Printed Name:	
Signature and Title: Date: (mm/dd/yy)	
12a. Date employee received evaluation document: 4/24/17 Employee's Initials: JNB (Does not indicate agreement or disagreement)	
b. Employee Response: NAC 284.470 requires that you complete the section below and sign the report on performance within 10 working days after discussion with your supervisor. <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> Request Review* (If you disagree with the report and request a review, you must specify the points of disagreement below or attached.)	
c. Employee Signature: <i>[Signature]</i> Date evaluation returned to supervisor: 4/24/17	
13. Appointing Authority Review: <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required) <i>John needs to work on integration with constructability and mark offroad. Need to see improvements of Post Construction Reviews.</i>	
Appointing Authority's Printed Name: HARON FOERSCHLER, P.E.	
Appointing Authority Signature & Title: <i>[Signature]</i> CHIEF CONSTRUCTION ENGINEER Date: 4/27/17 (mm/dd/yy)	

* Note - Reviewing Officer uses form NPD-15R to respond to employee's request for review as outlined in NAC 284.470

ER 019

MY 5/23/17

000326

000341

Employee Evaluation & Development Report – Page 2

Employee Name: (Last)	(First)	(Initial)
60088	John	
Employee ID #: 60088		

14. Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A). Please note that whole number ratings are used, not fractions, to rate individual job elements.	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #1: Supervise and train the Constructability and Project Scheduling Staff and assign tasks to accomplish Division responsibilities and Department goals.	2	15%	.3
Job Element #2: Review plans, specifications and special provisions for accuracy, completeness and constructability providing recommendations as needed. Calculate Liquidated Damages, Construction Engineering Budget and User Costs for all construction projects. Actively assist the Project Coordinators in answering contractor questions submitted during the bidding period.	1	10%	.1
Job Element #3: Manage the Division's scheduling program. Generate Time Determination Schedules (TDS) to determine working days. Manage the scheduling training for the Resident and Assistant Resident Engineers on the Department's latest version of scheduling software. Analyze contractor schedules for compliance with contract documents and assist with resolving contractor scheduling issues in a timely manner.	2	10%	.2
Job Element #4: Attend various meetings including Project Status, Design/Construction, Cost Risk Analysis and Value Engineering. Utilize information and decisions made in these meetings to prioritize workload and implement changes to programs and contract documents as recommended.	2	10%	.2
Job Element #5: Serve as an active member of the Bid Review Analysis Team (BRAT). Analyze contractor bids for compliance with Department requirements for responsive bidders and provide recommendations for award of all construction contracts. Inform the Resident Engineer of potential contractual issues discussed at the BRAT meeting.	2	5%	.1
Job Element #6: Manage Post Construction Review Meetings and ensure reports are generated with findings and recommendations. Generate Semi-Annual reports summarizing findings and recommendations for implementation on future projects.	1	5%	.05
Job Element #7: Manage the tracking of contract modifications to identify field issues and resolutions for future construction contracts.	2	5%	.1
Job Element #8: Generate and manage the travel budget for staff. Assist the Chief with budgetary tasks including Construction Engineering cost estimation for projects to meet the Department's Performance Measure target.	2	5%	.1
Job Element #9: Assist the Chief and Assistant Construction Engineers on special projects as assigned.	2	5%	.1

ER 020 000327

000342

Employee Evaluation & Development Report -- Page 3

Employee Name: (Last)	(First)	(Initial)
Employee ID #: 60088		

14. Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A). Please note that whole number ratings are used, not fractions, to rate individual job elements.	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #10: Communication	2	10%	.2
Job Element #11: Teamwork	2	10%	.2
Job Element #12: Responsiveness	2	10%	.2
Overall Rating (Scale: 1 to 1.50 = DMS; 1.51 to 2.50 = MS; 2.51 to 3 = ES) (A "does not meet standards" rating may affect adjustments based on merit (NAC 284.194). Another evaluation must be completed within 90 days (NRS 284.340).)			1.85

15. Rater's Comments: (A "does not meet standards" rating for any job element must include a detailed explanation of the deficiencies.)
John, You have been in our office for a couple of months and I appreciate your help, and thank you for volunteering to step up for the consultant side. I have given you a below standard in a couple of critical areas. First one was the plan reviews. Your section while self-sufficient could use the help to lighten their load and you will not be able to fully understand what they do until you do it as well. The second area is in the post construction reviews, it was agreed upon to allow you and Mark some time prior to looking into the review process, that time has passed and we need to have you focus on this. I have not seen much interaction and if you do not initiate the interaction it will not happen.

16. Development Plan & Suggestions: (The supervisor will address how the employee can enhance performance and achieve standards; indicates recommendation for further development and training. This section shall be discussed with the employee.)
Please work on the following areas. We need to develop a method for the post construction reviews to become a useful tool, the information is not being captured in the review and then transferred back to Design, Management is here to support change to the post construction process and will help you if you would like, but we feel that you can create the change. Please schedule time with Mark to begin looking at the process and together develop a plan for improvement, please report back to management on your plan once you have developed it. Also please integrate into the constructability section, take a project or two from the beginning and learn the entire process, sit down with the section on a regular basis to find out what they are working on and what help they need from you, jump into the round table discussions when you see they are working with a designer on a project. As the Constructability manager you should have a couple of project that are yours at any one time, and you should be familiar with all projects, know the teams, know the dates, and have an idea of the major issue on any project.

17. Merit Award Program: (Provide information to employee relating to the Merit Award Program established in NRS 285.020.) Please check method(s) used:

☐ Employee Handbook ☒ State Human Resource website: ☐ Other (List details) _____
<http://hr.nv.gov>

Distribution: Original to Division of Human Resource Management; Copy to Agency; Copy to Employee

NPD-15
Rev. 11/15

ER 021

000328

000343

EXHIBIT D
DISMISSAL LETTER DATED MAY 5, 2017

ER 022

000329

000344



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

RUDY MALFABON PE, Director

In Reply Refer to

May 5, 2017

John Bronder
Manager I
45 Desert Willow Way
Reno, NV 89511

Rejection of Probationary Employee

Dear Mr. Bronder

This letter constitutes notice that you have been rejected from probationary status in the position of Manager I at end of shift, today, May 5, 2017. This notice is provided in accordance with Nevada Administrative Code 284.458.


Sharon Foerschler
Chief Construction Engineer

ER 023

(1) 1667

000330

000345

EXHIBIT E
TRANSPORTATION BOARD MEETING MINUTES
PAGES 18-20 OF JUNE 12, 2017

ER 024 000331

000346

Transcript of Nevada Department of Transportation
Board of Directors Meeting
June 12, 2017

Martin: Mr. Terry, on these job order contracts for this type of a situation with Stantec that we're talking about on Item No. 3, CA Group, Horack, and Kimley-Horn, aren't the job orders put out as a small RFP to the three firms and a proposal on each one of those job orders individually?

Terry: Yes. Again, John Terry, Assistant Director Engineering. Yes, that is correct, although we could group a few of them. These are relatively small projects, but yes, they would be for individual projects, but we may choose to group a couple of them together and put one out for, like, three—one out that has three small projects with our estimated, you know, \$200,000 fee, and we'd put it out that way and then negotiate with the selected firm on the group of projects. So, yes, it could be individual projects or we could group a few small ones together.

Martin: But my point is, is that no single job order contract is just simply handed to one of these vendors without a RFP being issued.

Terry: Right, it's a relatively quick and short competition between the three for each of the task orders.

Martin: Okay, thank you. I just wanted to clarify that. The second point is, is that on Item No. 2, we have a \$600,000—basically, the same thing, a job order contract on an on-call basis for biological and support services. I want to go back to the agenda for—in May, we just issued a \$1 million contract to HDR for a very similar wording, very similar scope of work. Why is it that we need to have HDR at \$1 million and each one of these firms at \$600,000 or \$200,000 each, however you want to put it?

Terry: Again, John Terry, Assistant Director Engineering. There is some overlap, but really not much. The contract with HDR that was in last month's, which was an update to add another year to their contract that's been going for a while is for our major projects, mostly our major projects in Southern Nevada to do almost daily biological support for these construction contracts. Again, the big ones, and have a biologist almost on-site every day that major construction activity is going on. This on-call one is to assist our staff with both the design phase, the pre-construction phase, and just an audit during the construction phase of our medium and smaller projects, as well as our encroachment permits and other things that are happening across the state.

So, while there is some overlap, they are different roles. These are much smaller localized projects that are done on just an on-call and an audit basis. So, there is

Transcript of Nevada Department of Transportation
Board of Directors Meeting
June 12, 2017

similarities in that we want a biologist, but that's kind of where the similarities end, and the other one is our major project, everyday activities, and these are more our spot activities across the state.

Martin: Okay, thank you. I just noticed that the wording was very, very similar in the description. So, that's why I was asking the question.

Sandoval: Thank you. Any other questions with regard to Agenda Item No. 4? Mr. Almberg.

Almberg: Thank you, Governor. Actually, a lot of the questions were identical questions that have already been asked, so I think we're on a lot of the same page here. So, the question that brings up now is, which has been discussed, is in—on Page 16 of Item No. 2, 16 of 50, No. 2 there says confirmed that they were competing for two other firms for each request for action—or approach. So, what makes that selection? We've narrowed it down to the three based on qualifications. Now we come back in, and the three compete for each individual job, and what becomes a selection on that job? Who's awarded that?

Terry: I may need some help with the answer to the question, a very simple, almost one-page proposal, who do you have available to work on this job, maybe a little bit about the scope, and a small selection committee makes that selection, and we execute the contract. So, it's very much, a very shortened version of our bigger selection process.

Almberg: Well, I mean, I think that's a good answer. It comes back, in a sense, who's available and who has the people currently that can assist us in here. I was just trying to verify if it was something that came in now and that we're putting a cost proposal to that says, hey, what's your cost to do this, and I'm going to select a low bidder. But that's not the case. You're just coming back in as who's available and who functions there.

And so, the one last question, going back to what the Controller started about, I had that same concern when we had overhead rates going from 110% all the way to 190%. Your response to him, come back and cluded that their pricing comes back fairly similar. It's just showing up as in potentially how their wages are to their employees is making a big difference in their overhead rate. And so, my question is can we, as the Board, see their hourly rates, because this is a situation where they should be providing us strictly their hourly rates. We have no specific

Transcript of Nevada Department of Transportation
Board of Directors Meeting
June 12, 2017

scope to it. So, all at this point in time that we can compare, it's an identical scope of work from all three things.

Terry: Again, John Terry, Assistant Director for Engineering. You probably—if you want those, we can get them to you. Because these are going to be small procurements, probably very few of them would be over \$300,000. It would just be in the informational items, but, you know, we could provide that information if the Board desires. But we will have that when we negotiate the contract, you know, the rates for each of these firms. But in our normal business, unless they were large contracts, which these aren't anticipated to be, they would just show as informational, but we certainly have that.

Almberg: Yeah, I personally would like to see it just to come back in here, because, you know, the first thing that pops out is this big discrepancy of 190% to 110%. You know, are we getting the same value, you know, for the company that's working at 190% overhead. Are we only—get 1,000 hours out of them, and the company working at 110% overhead, are we going to get 1,500 hours out of them. And so, the overhead doesn't help me relate to potentially how much work we'll be getting out of them.

Terry: And maybe if I could just clarify one thing. There's no way differences in salaries are going to make up the difference between 192% and 110%. That is a huge discrepancy in overhead rates. Usually, it's between a few—they're all around 140% to 150%, and, you know, it sort of evens out. That is a big discrepancy, and I just want to clarify I don't see any way that that's going to be accommodated. The one with the higher overhead, we're going to pay more money.

Almberg: Well, I mean, I've had this conversation in the past with Mr. Hoffman, and, you know, I keep trying to grasp the concept of what this overhead rate is and how it relates to the work that we're getting out of them, and what I expressed to Bill in the past and what my thought is, if all things being equal, all things being the same quality of people, same quality of equipment, everything else, but we have an engineering company that chooses to lease their office space at the bottom floor, and we choose to have a company that leases space at the top floor. One will have a very high overhead rate compared to the other. And so, I'm not interested in coming in here and spending state monies for somebody that has a nice view from their office, and I just want it to be something that's controlled, that we're aware of this.

Transcript of Nevada Department of Transportation
Board of Directors Meeting
June 12, 2017

Terry: And we can make you aware of it. I would say often times, the higher overhead rate firms typically tend to be more specialty firms, especially geotech and specialty traffic firms, and the more general firms tend to have the lower overhead rates, not just where their offices are located, but I just wanted to make clear that I wasn't saying that we're going to get the same rates between a firm with 192% and 110%. That's not going to happen. So, we need to negotiate those fairly.

Almberg: All right. Thank you.

Sandoval: Mr. Terry, I just want to make sure I'm clear. So, you know, I know you can't commit now, but are you saying it's unlikely the 192% will get the work?

Terry: No, sir, I did not say that. In my opinion, we found them to be qualified. They will compete fairly with the other firms for the work. Will we pay a little bit more should we hire them, I believe we would.

Sandoval: That begs the question is if it's the same work, why would we pay someone 192% versus 110%?

Terry: Yeah, their people, their proposal, yeah. I don't have a good answer for that.

Sandoval: Okay. All right, any other questions, Board Members, with regard to Agenda Item No. 4? Mr. Nellis, anything else you want to present on that agenda item?

Nellis: No, sir, that concludes this agenda item.

Sandoval: If there are no further questions, the Chair will accept a motion to approve the four agreements included in Agenda Item No. 4.

Knecht: Move.

Sandoval: Controller has moved for approval for those agreements. Is there a second?

Almberg: Second.

Sandoval: Second by Mr. Almberg. Any questions or discussion? And again, Ms. Munoz, very well done, really enjoyed your presentation. All those in favor, say aye. [ayes around] Opposed, say no. Motion passes unanimously. Let's move to Agenda Item No. 5, Contracts, Agreements, and Settlements. Mr. Nellis.

Nellis: Thank you, Governor, and again for the record, Robert Nellis, Assistant Director for Administration. There are two attachments under Agenda Item No. 5 for the

EXHIBIT F
TRANSPORTATION BOARD MEETING MINUTES
PAGES 16-17 OF AUGUST 11, 2017
(MEETING ACTUALLY OCCURRED ON AUGUST 14, 2017)

ER 029

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000351

Transcript of Nevada Department of Transportation
Board of Directors Meeting
August 11, 2017

Malfabon: Sahara BRT.

Skanske: And the reason why I ask is that the Tiger Program has been very successful across the country, and I think the more that we can support the Senate's version of the Tiger appropriations than the House or the Administration, that bodes well really for—bodes really well for small states like Nevada. We can compete.

Malfabon: Member Skanske, I think also RTC Washoe won one for—is that the fourth [inaudible] yeah, so, another Bus Rapid Transit project. So, I think that whenever you see the MPOs win one of those awards, it's helpful for the entire state, as you pointed out.

Skanske: Yeah, the Tiger Program has been very successful for smaller states like Nevada. So, if we can suggest to our delegation in both houses to try and keep the Senate version of this when they go to conference, that would be very helpful to our state. *The second thing that I—as you can imagine, you know what I'm going to bring up next, is a couple of these contracts. The one is the I-15/215, and then the other one is the I-15 Tropicana Interchange. And just so that you all know, I'm not letting up on this anytime soon. I'm here another five months, and I'll stay on it five more months unless the Governor has the willingness to appoint me to another term. I'll keep my fingers crossed. But I have a [laughter] I try to, publicly. Anyway, I just have a—I'm trying to keep it together here. I'm sorry. I just have real difficulty with how this whole thing is awarded, and so what I'd like to see is—I'm going to try to ask for this information a different way, because I'm getting my fingers and my hands around the Shell game, and the Shell game goes like this. This month, I am the prime. Next month, you're the prime. Next month, they're the prime. Next month, they're the prime, and then we're the subs; they're the subs; this is the sub, and that's got to stop, Rudy. It just has to stop. This is—to me, this just is not right. It is not right, and I don't know how we fix it, but I think we have to fix it. There are the same companies that are getting the same contracts, and it has to change. And so, the fact that you're trying to do it, I'm going to tell you that's great, but I'd like to see a whole new list of names next month and the month after that, and the month after that. We're cherry-picking the same firms, and you're all going to disagree with me in the Department, and that's fine. I've been around this for 31 years. This is not my first rodeo. I've represented a lot of these companies. I know how this deal is done, but if we don't start getting some new names at the top—my phone rang off the hook all weekend. I took eight calls, and I didn't want phone calls on a Saturday and a Sunday, but we've got to change it or there is going to be mutiny. I'm just telling you. The engineering firms that are not even being considered are not happy, and*

Transcript of Nevada Department of Transportation
Board of Directors Meeting
August 11, 2017

we—I went through the minutes from last month, and I'm going to say it again. We hand out a lot of dough, and we've got to spread this money out across the board. You cannot tell me that on these contracts, that the same firms are chosen every month. So, I appreciate what you've said today, but it has to change. So, actions speak louder than words, and I'm talking to everyone that deals with this issue. And if I see the same names again next month and the month after that, I'm going to put you all on notice, I'm going to call it out. I have a fiduciary and moral obligation to change this issue, and if my colleagues on the Board disagree with me, then I will be happy to step down, and I will take this issue in a different way. But if we have the same names next month and in October and November and December, I'm going to bring it up. I'm just letting you know. I don't know who's on these selection committees. I don't know how these things are picked and these companies are picked, but you cannot tell me—I'll repeat what I said last month. You cannot tell me that there are other firms that are not qualified for these jobs. You cannot. So, I want to know what the solution is going to be, and I'm going to look to my colleagues. If I'm out of line, tell me publicly today, and then I'll shut up, but this is month after month, after month, and I don't think it's your fault. I don't care who's to blame. I'm not into blame. I want responsibility. So, next month, I'm going to make a request that there are some new names at the top of these lists, and if they're the same names, I will be in this chair, and I'm going to tell you I'm going to bring it up. Is that fair? If it's unfair, then tell me, or you can pull me aside after the meeting and say, "I think you're out of line." But I will bring it up month after month. So, I'm just giving you all predictability, okay, so you know where this one Member stands. I can't speak for the other six Members of the Board. So, if you want to call me and tell me what the solution is, I'm happy to have that conversation privately, but it's got to change. We have to fix it, because I don't want any more phone calls on weekends. Happy to take phone calls. That's not the point, but it's happening more and more frequently, and these firms are afraid to bring it up because they're afraid they're never going to get another contract again. So, let's change the way we do it. Let's make sure that we are doing the necessary things that have to be done, and let's open up the door to some other firms to compete for these projects and get, across the board, access to the amount of money that we produce and we invest in the state. Thank you, Governor.

Sandoval: Thank you, Tom. Any other questions or comments from Board Members with regard to the Director's Report. All right. So, I would suggest, Rudy, that you take some time to sit with Member Skancke and perhaps go through some of those issues.

000339

Reorder No 5135EX
JULIUS BLUMBERG, INC
NYC 10013
©10% P.C.W

000354



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 S. Stewart Street
Carson City, Nevada 89712

RUDY MALFABON, P.E., Director

January 4, 2019

In Reply, Refer to:

Sharon Foerschler, P.E.,
Chief Construction Engineer
Attn: Jessica Downing, P.E.,
Project Manager

Audit Report CV22-19
Agreement P617-16-040
Project No: 73549
CA Group, Inc.

We have completed a cost audit of *CA Group, Inc.* Agreement P617-16-040 to perform professional and technical engineering services to ensure that the construction of Project SPSR-0648(009) located on SR-648 Glendale Avenue from Kietzke Lane to McCarran Boulevard in Washoe County, Nevada, is accomplished in conformance with the plans, specifications, and all other contract documents. Our examination was made in accordance with Generally Accepted Government Auditing Standards (GAGAS) and included such tests of the accounting records and such other auditing procedures as we considered necessary to verify compliance with governing State and Federal regulations.

In our opinion, all pertinent requirements have been satisfied and all of the \$2,061,315.04 billed to this Project is sufficiently documented to support payment by the State.

Our report is written for use by Nevada Department of Transportation officials in determining the allowability of costs claimed by *CA Group, Inc.* and should not be used for any other purpose.

We recommend approval of payment in accordance with the *Audit Report Summary* that follows.

Sincerely,

Sandeep Garg
Chief Auditor

SG:DZ:ch

Concur

Date

Objectives, Scope, and Methodology

OBJECTIVES

This audit was undertaken to provide the Federal Aid Billing Section of the Accounting Division with assurance that the costs incurred and paid by NDOT were correct, reasonable, and in conformance with pertinent requirements.

SCOPE

All costs billed to NDOT by *CA Group, Inc.* in connection with Agreement P617-16-040 were subjected to audit coverage.

METHODOLOGY

A judgmentally selected sample of billing invoices representing 31.88% of the billed costs was examined to verify that all mathematical calculations were correct. Additionally, each line item on the sampled invoices was traced to its supporting documentation. This included tracing billed direct labor hours to their supporting individual time sheets and tracing other direct costs to supporting vendor invoices.

We verified that the above sample of billed costs was in compliance with the terms of the Agreement and that the costs were authorized by State and Federal regulations or policies.

Audit Report CV22-19

Audit Report Summary

Amount Billed	\$2,061,315.04
Audit Adjustments	\$ <u>0.00</u>
Approved per Audit	\$2,061,315.04
Progress Payments	<u>(\$2,061,315.04)</u>
Due to NDOT from CA Group, Inc.	\$ <u>0.00</u>

Project Cost Allocation:

Agreement	Project	Amt Paid to Date	Allocation of Amt Due	Total Cost
P617-16-040	73549	\$2,061,315.04	\$0.00	\$2,061,315.04

ER 034

000342

000357

000343

000358

Lori M. Story

From: Kaiser, Reid G <RKaiser@dot.nv.gov>
Sent: Wednesday, July 12, 2017 8:09 AM
To: Malfabon, Rodolfo
Cc: Stocks, Hollis L
Subject: FW: Former NDOT Employee
Attachments: P617-16-040_C910 Augmentation_Glendale_Negotiation Summary.pdf; P617-16-040_Attachment A_CAGroup_Fee Proposal.pdf; P617-16-040_CA Group_Glendale_Executed Agreement.pdf

Here is information for our meeting with John Bronder Friday afternoon.

From: Lani, Stephen L
Sent: Tuesday, July 11, 2017 6:34 PM
To: Kaiser, Reid G ; Foerschler, Sharon L
Subject: RE: Former NDOT Employee

Reid,

Not sure where they would be going with this. I know there was at least one firm with former NDOT employees that was very unhappy with the selection; could be continued fallout from that. Risks are high on the construction contract and District is managing it to the best of their ability with the resources they have available. Yes it's expensive if you were to just snapshot an individual, or even the agreement at a glance; but maybe help put into context:

- 1) Contract 3660 – Glendale Avenue – was awarded at \$14.2M. Complex urban construction in which we required the contractor to work 6 days per week in order to complete. Day and night operations were expected, as well as weekends and marathon operations.
- 2) Originally estimated around \$16.3M (other bidders were in the \$16M range) and we estimated CE augment at \$2.1M or around 12.8% (15% probably reasonable given contract and risks).
- 3) We took on the environmental cultural resource monitoring aspects under the CM augmentation since NDOT was not able to provide staffing and wouldn't otherwise be able to certify the project for advertising.
- 4) We also included PIO outreach as part of CM augmentation since NDOT was unsure they would be able to address adequately during construction.
- 5) To date we have expended approximately \$4,900,000 on construction and approximately \$487,000 on total Construction Engineering (about 10% CE - reasonable so far)
 - a. Consultant at approximately \$308,000 to date (thru Jun 22nd)
- 6) This is only one of about 6 active contracts that Crew 910 is working on right now (not counting all the emergency contracts they've been cleaning up). Their Asst RE is great but has less than a year's worth of experience in position, we needed to insure an effective position of leadership on this project to help balance overall crew workload.
- 7) It was anticipated the consultant would probably make up the majority of the CM team for this project.
- 8) How the districts are utilizing the consultants to staff the project is their call, as long as we are operating within the terms and costs of the original agreement. If the current burn rate is higher than expected, the crew and district are well aware of the fact they may have scale back later on to stay within the overall agreement.

It comes down to the fact NDOT in general, and District II specifically, is strapped/tapped out/overextended right now with the current work program; and to have this type of job running 6 days a week, with the high risks involved, we end up paying a premium for the manpower and expertise necessary to staff it properly. We planned and budgeted for a high risk situation, and as long as we remain within the agreement (which we have every intent of doing)

It's not going to be more expensive than planned. It is more expensive than we'd like, but unfortunately that's the cost of business within our current model.

Attached are a few documents you may find helpful to work thru the "costs" on this project's CM agreement. Hope this help you guys. Let us know if you need anything else.

Thanks, S. Lani -
Stephen L. Lani, P.E.
Assistant Construction Engineer
(775) 888-7065
(775) 720-4528 Cell
<mailto:slani@dot.nv.gov>

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From: Kaiser, Reid G
Sent: Tuesday, July 11, 2017 4:08 PM
To: Foerschler, Sharon L <SFoerschler@dot.nv.gov>; Lani, Stephen L <SLani@dot.nv.gov>
Subject: Former NDOT Employee

A former NDOT employee is meeting with Rudy and me on Friday, July 14 to discuss crew augmentation on project 3660, Glendale Ave., and the exorbitant cost this project is costing NDOT. Do either of you have any idea what this person is talking about?

Reid G. Kaiser, P.E., Assistant Director, Operations
Nevada Department of Transportation
1263 South Stewart Street | Carson City, Nevada 89712
Office: (775) 888-7440 | Cell: (775) 720-4532
www.nevadadot.com | rkaiser@dot.nv.gov

7.14.17 - JOHN BIGNOLD

TAKE A LOOK AT CONSEQUENT RATES -

• ADVISE THEM - PROPOSE HOURLY RATES

WEL STAFF WHEN THEY NEGOTIATE

• COME UP W/ ESTIMATED HOURLY RATES

• TALK TO ELMAN ABOUT RATES FOR CASUALTY'S FOR OTHER
STAFF

[REDACTED]

[REDACTED]

[REDACTED]

From: Malfabon, Rodolfo
Sent: Tuesday, May 15, 2018 5:21 PM
To: Sleben, Tonya M <TSleben@dot.nv.gov>
Cc: Kaiser, Reid G <RKaiser@dot.nv.gov>; Wall, Allison M <AWall@dot.nv.gov>
Subject: Re: Bronder Appeal

Hello, Tonya -

I didn't write any notes during the meeting but I do recall the meeting. Mr. Bronder was stating that he questioned hourly rates for consultants and he questioned Pete Booth, specifically, on a construction augmentation contract. I remember stating I agree that a high skill level consultant (former assistant district engineer, P.E.) working at a lower skill level (assistant Resident Engineer or inspector) should not be paid at the higher skilled labor rate; the labor rate should be negotiated to an acceptable rate, not simply accepting what the consulting firm pays the individual. I mentioned that HQ Construction Division keeps track of reasonable rates for different skill level positions. I remember bringing up this issue at a subsequent Division Head meeting (August 2017?). I remember Mr. Bronder said he had a job interview with another state agency (NDEP?) and we said we would call them on his behalf, as Reid said he was told Mr. Bronder was not a good fit for the position he transferred to from Elko to HQ Construction.

Regarding the issue of consultant overhead rates, this has been discussed in depth with the Construction Working Group, a three-member subset of the Transportation Board that deals with specific construction and consultant-related issues. Personally, I sign off on recommendations of committees making a consultant selection. While I may be concerned with seeing some firms get selected multiple times, I do not overturn a committee's selection unless they did not follow the procurement process. I trust that Agreement Services provides the proper oversight in the procurement process and sometimes ask to see org charts from proposals to ensure that there is no "bait and switch" going on with current contracts. The issue of lack of capacity and inability to perform has not been an issue with the firms that Mr. Bronder is saying get too much work.

Personally, I don't view this as a whistleblower issue. These were issues expressed by Transportation Board members' questions and statements which led to the Director's Office following up with staff through the CWG agenda items or directly with the Transportation Board. Mr. Bronder's questioning of Mr. Booth's hourly rate would not have prompted any personal retribution, in my opinion.

I recall a personal conversation with Mr. Bronder while he was a Resident Engineer in Elko. He said morale was low and that he felt he could do a better job than Kevin Lee, who he didn't agree with how Kevin was running District 3. I was shocked that Mr. Bronder would make such a statement, as Kevin Lee was well respected personally and as a District Engineer. At the time, Kevin was still in his position and had not yet retired, but this was Mr. Bronder's way of expressing his interest in the upcoming vacancy. Mr. Bronder came across as a know-it-all without having the depth of understanding that comes with years' of experience. I felt this interaction was representative of Mr. Bronder's character, as he seemed to be self-assured of his opinions being correct even if he didn't understand all the facts. If this is any indication of how he acted in his position in the Construction Division, I could see why they'd feel he didn't fit in there.

That is my recollection of my interactions with Mr. Bronder.

Sent from my iPad

ER 038

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000363

State of Nevada Job Application

Recruitment #: 32771 **Class: 08.224 MANAGER 1, PROFESSIONAL ENGINEER**
Submitted: November 3, 2017 at 5:14:44 AM PDT
App Status: Eligible on November 29, 2017 at 10:17:48 AM PST

Contact Information from Application

Name: JOHN BRONDER
Address: 45 DESERT WILLOW WAY
RENO, NV 89511
USA
Home Phone: 7758531985
Other Phone: 7757728968
Work Phone: 775-884-2785
Email: jbronder@sbcglobal.net
Contact Method: Other Phone

Job Title: PROFESSIONAL ENGINEER
Department: Conservallon and Natural Resources
Division: State Parks

Other Information

Veteran: No
Disabled veteran: No
Widow or widower of a person killed in the line of duty: No
Widow or widower of a veteran: No
Member of the Nevada National Guard: No
Member of Sheriff's Search and Rescue or Rescue Unit of Civil Air Patrol: No

A record of conviction will not necessarily bar the applicant from employment; and

(b) The appointing authority will consider factors such as:

- (1) The length of time that has passed since the offense;*
- (2) The age of the applicant at the time of the offense;*
- (3) The severity and nature of the offense;*
- (4) The relationship of the offense to the position for which the applicant has applied; and*
- (5) Evidence of the rehabilitation of the applicant.*

This section does not apply to any applicant for employment:

- (a) As a peace officer or firefighter; or*
- (b) In any position that entails physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center.*

Pursuant to a specific provision of state or federal law, a person may be disqualified from employment in a particular position because of the particular criminal history of the person.

Employment History

Dates: 10/2017 to 11/2017

Employer: Nevada Department of Conservation and Natural Resources

Job Title: Professional Engineer

Location: Carson City

Supervisor: Tim Hunt

Supv Title: Chief of Engineering and Planning

Supv Phone: 775-684-2772

Hrs per Wk: 40.0

Monthly Sal: 4,393.50

Reason for Leaving: Currently Employed

Number and Titles of People Supervised: none

Major Duties:	Description	%
	Design, development and project management for capital improvement projects. Perform project development duties from schematic design through permitting/bid documents, as well as construction management from advertising through construction and project closeout. Preparation of work programs; participation in the engineering design process; CADD drafting; preparation of bid documents, specifications & project estimates; permitting; development of consultant requests for proposals, consultant selection, consultant contract management, construction administration including solicitation of bids, processing project addenda, conducting bid opening, contract writing, processing invoices, change orders and submittals; inspection of projects for compliance with approved plans, specifications and related codes; and providing technical assistance for field staff.	100

Dates: 05/2017 to 10/2017

Employer: Amec Foster Wheeler

Job Title: Senior Associate Engineer

Location: Reno, Nevada

Supervisor: John Brandt

Supv Title: Federal Programs Manager

Supv Phone: 858-278-3600

Hrs per Wk: 40.0

Monthly Sal: 13,348.67

Reason for Leaving: Accepted position with the State of Nevada

Number and Titles of People Supervised: none

Major Duties:	Description	%
	Consultation relating to Department of Defense project where construction documents were completed but not yet through the construction phase.	100

Dates: 02/2017 to 05/2017

Employer: State of Nevada Department of Transportation

Job Title: Manager I / Constructability Manager

Location: Carson City

Supervisor: Jeffrey Freeman

Supv Title: Assistant Construction Engineer

Supv Phone: 777-888-7662

Hrs per Wk: 40.0

Monthly Sal: 6,699.00

Reason for Leaving: Position did not fit my engineering background

Number and Titles of People Supervised: 1 Professional Engineer
1 Supervisor III / Associate Engineer
3 Staff Engineer II

Major Duties:	Description	%
	Supervise and train the Constructability and Project Scheduling Staff and assign tasks to accomplish Division responsibilities and Department goals.	15
	Review plans, specifications and special provisions for accuracy, completeness and constructability providing recommendations as needed. Calculate Liquidated Damages, Construction Engineering Budget and User Costs for all construction projects. Actively assist the Project Coordinators in answering contractor questions submitted during the bidding period.	10
	Manage the Division's scheduling program. Generate Time Determination Schedules (TDS) to determine working days. Manage the scheduling training for the Resident and Assistant Resident Engineers on the Department's latest version of scheduling software. Analyze contractor schedules for compliance with contract documents and assist with resolving contractor scheduling issues in a timely manner.	10
	Attend various meetings including Project Status, Design/Construction, Cost Risk Analysis and Value Engineering. Utilize information and decisions made in these meetings to prioritize workload and implement changes to programs and contract documents as recommended.	10

Serve as an active member of the Bid Review Analysis Team (BRAT). Analyze contractor bids for compliance with Department requirements for responsive bidders and provide recommendations for award of all construction contracts. Inform the Resident Engineer of potential contractual issues discussed at the BRAT meeting.	5
Manage Post Construction Review Meetings and ensure reports are generated with findings and recommendations. Generate Semi-Annual reports summarizing findings and recommendations for implementation on future projects.	5
Manage the tracking of contract modifications to identify field issues and resolutions for future construction contracts.	5
Generate and manage the travel budget for staff. Assist the Chief with budgetary tasks including Construction Engineering cost estimation for projects to meet the Department's Performance Measure target.	5
Assist the Chief and Assistant Construction Engineers on special projects as assigned.	5
Communicate with and develop teaming relationships with groups and divisions within and outside the organization. Develop acceptance and demonstrate value of the Constructability Group working within the 4-digit contract process. Participate in committees for the writing and review of process manual or guides in construction administration and traffic safety.	30

Dates: 06/2016 to 02/2017

Employer: State of Nevada Department of Transportation

Job Title: Manager I / Resident Engineer

Location: Elko

Supervisor: Boyd Ratliff

Supv Title: Assistant District Engineer

Supv Phone: 775-777-2812

Hrs per Wk: 40.0

Monthly Sal: 6,699.00

Reason for Transferred Laterally to Construction Division

Leaving:

Number and Titles of People Supervised: 1 Supervisor III
1 Supervisor I
8 Engineering Tech I - IV

Major Duties:	Description	%
	Plan, coordinate and oversee large highway construction projects, programs and consultant contracts/agreements and perform licensed professional engineering functions.	30
	Train, supervise and evaluate the performance of subordinate supervisors; develop policies and procedures; and allocate staff and resources to accomplish goals and objectives.	30
	Responsible for the operations and staff of Construction Crew 912 based in District III, Elko. Interpret rules and regulations and assess conflicting situations, divergent views, complex data, and administer 3 complex construction projects in Nye, White Pine, and Eureka Counties.	40

Dates: 10/2004 to 06/2016

Employer: Amec Foster Wheeler

Job Title: Senior Associate Engineer

Location: Reno, Nevada

Supervisor: John Brandt

Supv Title: Federal Programs Manager

Supv Phone: 858-276-3600

Hrs per Wk: 40.0

Monthly Sal: 12,261.60

Reason for Local office closed, discontinued infrastructure business

Leaving:

Number and Titles of People Supervised: Senior Engineer - 4
Associate Engineer - 1
Construction Inspector - 2
CADD Drafters - 2

Major Duties:	Description	%
	Infrastructure Group Manager - Assigned and scheduled employees to projects. Performed yearly performance evaluations. Determined staffing levels and either initiated the hiring process through Human Resources or initiated the lay-off process. Conducted regular group staff meetings. Managed technical staff of civil engineers, water resource engineers, Primavera scheduler, archaeologists, construction inspectors, and material testers. Reported to the Office Manager on the performance of the Group.	15

Senior Project Manager - Managed all aspects of projects dealing directly with clients, financial budgets and performance, selecting the team of employees to perform the work, and reporting project status to the Office Manager. Managed complex design-build projects including bid preparation, contracts, design management, construction management, and contract closeout. I managed the design-build for BLM/Forest Service Interagency facility for HotShots building, barracks, support buildings, and site development. Responsible for technical preparation of the qualifications package and preparation of the bid prices. Managed the design team of Architects and Engineers through schematic design, design development, and construction documents. Self performed the civil engineering design of the site and utility connections. Served as Construction Manager responsible for client contact, contractor management, and quality assurance services.	25
Office Contract Administrator - Performed first review of contracts and worked directly with corporate attorneys to negotiate agreeable terms and conditions between the client and company.	5
Business Development - Identified opportunities for future work and led proposal teams to research requirements and prepare proposal documents. Regularly met with clients to identify current and future needs and provide consultation to assist them with their programs.	15
Design Manager - Mentored staff and performed reviews of design progress for a variety of projects including street and highway design and rehabilitation; water, sewer, and storm water design; traffic control signage and striping; construction specifications; and bid documents. Performed Quality Control reviews for multi-discipline engineering projects for federal, state, and local government projects. I have served as the Design Group Manager for Title I Services on the Air Force Civil Engineer Center (AFCEC) contract in Kabul, Afghanistan in 2015. I managed a group of Afghan Civil, Mechanical, and Electrical Engineers for design of roadways, water systems, sewer systems, and site development, as well as planning studies for workforce entry into secured Afghan government facilities. I was Design Manager/A/E Point of Contact during construction for pre-design and schematic design, Title III AE Services, construction documents and construction administration services to rehabilitate the 18,000 SF Furnace Creek Visitor Center at Death Valley National Park. Facility is nominated as national historic structure. Services include architectural, MEP, landscaping to remove non-native plants, parking lot repairs with installation of shade structures, as well as a full structural assessment of existing buildings. Recommendations made to repair deficiencies in the existing structures, as well as development of drawings and specifications for building additions. Also provided construction administration support. Rehabilitation services to the deteriorated structure included improved sustainability features to meet certification requirements for LEED Gold.	15
Designer - Performed CADD design of streets and highway geometrics; water, sewer and storm water utilities; site grading and development; and building space planning and design. Prepared bid documents including general provisions, special provisions, technical specifications, and special technical specifications. Prepared construction phasing plans and scheduling reviews to develop contract working days. I managed a team and performed assessments and design of military facilities repairs at 9 facilities in the United States and one in Japan. Scope included validation of previously identified deficiencies and production of Technical Documents providing specifications and schematic drawings for corresponding repairs of electrical, mechanical, structural, roofing, and pavement systems by other contractors. Assessment results used to define U.S. Army Corps of Engineers (USACE) and DLA executable Sustainment, Restoration, and Modernization (SRM) projects. Tasks included site visits, development of repair project priorities with identified Installation Point of Contact (POC), and determination of whether repairs would affect suspect asbestos-containing materials (ACM).	25

Dates: 05/1998 to 10/2004

Employer: BJG Architecture and Engineering

Job Title: Vice President - Civil Engineering

Location: Reno, Nevada

Supervisor: George Ghusei

Supv Title: President

Supv Phone: 775 827-1010

Hrs per Wk: 40.0

Monthly Sal: 8,571.34

Reason for Pursue Public Works Infrastructure Project Design

Leaving:

Number and Titles of People Supervised: Staff Engineers - 3
CADD drafters - 2

Major Duties:	Description	%
	Civil Engineering Group Manager - Assigned projects to staff, performed annual performance evaluations, and reported group performance to the President.	20
	Civil Engineering Design - Designed site development projects for industrial and Commercial facilities through both the Design-Bid-Build and Design-Build delivery method throughout Nevada and California. Projects included site plans, grading plans, utility plans, street improvements, and jurisdictional permitting with the cities, counties, and state. Presented projects to local boards, city councils, and county commissioners for approval of development permits.	65

Board of Directors - Served as a member of the board of directors for the company making decisions for the company's strategies, finances, and business plans,	5
Business Development - Met with clients to develop opportunities and procure projects for the civil engineering group. Wrote proposals and contracted for work.	20

Dates: 01/1991 to 05/1998

Employer: Washoe County Water Resources

Job Title: Registered Engineer

Location: Reno, Nevada

Supervisor: John Collins

Supv Title: Manager, Department of Water Resources Supv Phone: 775 954-4801

Hrs per Wk: 40.0

Monthly Sal: 4,700.00

Reason for Career advancement

Leaving:

Number and Titles of People Supervised: Staff Engineer - 3
CADD Drafters - 2

Major Duties: Description	%
Utility Design - Prepared construction documents for water, sewer, and reclaimed water systems in Washoe County. Prepared jurisdictional permits and represented projects at public meetings. Coordinated with local entities for encroachments into city, county, and state right-of-ways. Prepared boiler plate for bid documents including contracts, phasing, contract working days and special provisions. Managed projects during construction including submittal review, RFIs, change orders, construction schedules, and pay estimates.	80
Capital Improvement Projects - Identified and budgeted capital improvement needs for the Utility Systems.	5
Customer Service - Assisted customers and developers with development and upgrade options to meet their specific needs.	10
Personnel - Participated in the interview and selection process for the hiring of new employees in the Engineering Division of the Department.	5

Dates: 09/1987 to 01/1991

Employer: Kennedy Jenks Consultants

Job Title: Project Engineer

Location: Reno, Nevada

Supervisor: Edward Marlow

Supv Title: Engineering Manager

Supv Phone:

Hrs per Wk: 40.0

Monthly Sal: 3,000.00

Reason for Career advancement

Leaving:

Number and Titles of People Supervised: None

Major Duties: Description	%
Civil Engineering Design - Performed technical design for a variety of projects including Nevada State Highway 208 in Yerington, Reno Tahoe Airport Taxiway B, North San Juan Sewer System, June Lake Water Treatment Facility, and the Pyramid Way Widening for RTC Washoe County.	100

Dates: 11/1986 to 09/1987

Employer: CDK Contracting Company

Job Title: Project Engineer

Location: Bingham Canyon, Utah

Supervisor: Bruce Jeffries

Supv Title: Project Manager

Supv Phone:

Hrs per Wk: 50.0

Monthly Sal: 2,500.00

Reason for Career advancement

Leaving:

Number and Titles of People Supervised: None

Major Duties: Description	%
Project Engineer - Duties included safety, procurement, scheduling, bidding, change order accounting, interaction with construction managers, and general support of the work crews on a \$400 million copper mine modernization project near Salt Lake City, Utah.	100

Dates: 09/1983 to 11/1986
Employer: Kennedy Jenks Chilton
Job Title: Staff Engineer
Supervisor: Marvin Davis
Hrs per Wk: 40.0
Reason for Pursue Construction Engineering Leaving:
Location: Reno and Elko, Nevada
Supv Title: Project Manager
Monthly Sal: 2,100.00
Supv Phone:
Number and Titles of People Supervised: None

Major Duties:	Description	%
	Civil Staff Engineer - Performed design for municipal projects ranging from the Reno Airport Loop Road to the development of the South Fork Dam Regional Recreation Facility.	80
	Construction Inspector - Served as the construction inspector for the Reno Airport Loop Road Project and moving to Elko to be lead inspector for the South Fork Dam Project.	20

Dates: 08/1979 to 08/1979
Employer: State of Nevada Department of Transportation
Job Title: Summer Intern
Supervisor:
Hrs per Wk: 40.0
Reason for limited duration Internship Leaving:
Location: Las Vegas, Nevada
Supv Title:
Monthly Sal: 710.00
Supv Phone:
Number and Titles of People Supervised: None

Major Duties:	Description	%
	Summer Intern - Worked on a painting crew in the Las Vegas area for repainting of crosswalks, lane arrows, and messages.	100

Education

High School Diploma or Equivalent Completed: High School Diploma
College, University, or Professional School:

Dates: 08/1979 to 05/1983 Institution: University of Nevada Degree: Bachelor's Degree Major: Civil Engineering Notes:	Location: Reno, Nevada Date Issued: 05/1983 Minor:
--	---

Licenses

Current Driver's License: Yes

Professional License / Certification / Registration:

Title: California Professional Civil Engineer Number: 40548 Issuing Board: California Dept. of Consumer Affairs Expires: Yes	State: CA Expiration Date: 03/31/2019
Title: Nevada Professional Civil Engineer Number: 7954 Issuing Board: Board of Professional Engineers and Land Surveyors Expires: Yes	State: NV Expiration Date: 12/31/2016

Skills

Administrative & Clerical Skills: Adobe Acrobat
Copy Machine
Customer Service
Fax Machine
Making Presentations to Large Groups
Personal Computer
Printer
Proofreading
Public Contact and Assistance
Scanner
Typing at 44 WPM or less

Computer Skills: Microsoft Excel
Microsoft Excel Intermediate level
Microsoft Office Suite
Microsoft Outlook
Microsoft Power Point
Microsoft Publisher
Microsoft Word
Microsoft Word Intermediate level
Nevada Employee Action and Timekeeping System (NEATS)
Spreadsheet Software - Intermediate
Word Processing Software - Intermediate

Fiscal/Financial/Accounting Skills:

Language Skills: English

Professional Skills: Engineering
Facilities Management
Government Relations
Managerial
Project Management
Public Speaking/Presentations
Supervisory Experience

Technical/Trade Skills: Computer Aided Drafting
Construction
Drafting
Engineering Technology

Relatives Employed by the State

Relative Name	Department	Relation
Bronder, Erica	Health and Human Services	Child

Availability

Location: Carson, Minden, Gardnerville, Genoa
Elko
Las Vegas, Boulder City, Indian Springs, Jean, Henderson
Reno, Sparks

Work Type: Permanent Full-Time

Travel %: Up to 50%

Pre-Screening**Additional Position Experience**

1 Do you have supervisory experience in a construction engineering setting? If yes, please describe this experience and where it was gained.

Yes

Clarification: I was recently the Resident Engineer for Crew 912 in Elko and gained the experience necessary to perform all the functions required for this position.

2 Tell us how you heard about this position?

X NVAPPS

Facebook

Twitter

Friend

Yammer

Colleague

Email

Other

Education and Experience

1 Do you have any one of these?

X Current licensure as a Professional Engineer (P.E.) and two years of experience performing professional engineering work in a supervisory or responsible project charge capacity.

One year of experience as a Supervisor, Professional Engineer in Nevada State service.

Licensure and two years of experience as a Staff II or Supervisor II, Associate Engineer in Nevada State service.

Licensure and an equivalent combination of education and experience.

None of the above

Special Requirements

1 Pursuant to NRS 284.4066, this position has been identified as affecting public safety. Persons offered employment in this position must submit to a pre-employment screening for controlled substances. Can you meet this requirement?

Yes

2 Registration as a Professional Engineer is required at the time of employment and as a condition of continuing employment. Can you meet this requirement?

Yes

Clarification: Nevada license #7954

Departments Willing to Work in:

Conservation and Natural Resources

Corrections

Nevada System of Higher Education

Public Utilities Commission

Transportation

000357

Reorder No 5135EX
JULIUS BLUMBERG, INC
NYC 10013
@10% P.C.W.

000372

Lori M. Story

From: Foerschler, Sharon <SFoerschler@dot.nv.gov>
Sent: Monday, April 24, 2017 6:34 PM
To: Freeman, Jeffrey A
Subject: Re: Johns review

Jeff,

Oh my gosh, are you kidding me??? We need to talk, I did not want him to sign his evaluation as you had written it! You have now put us in a bad situation as I want him to know we are unsatisfied with his performance to date. Why would you proceed with that evaluation for his signature when you knew about my concerns??? I am not happy with your decision to move forward with this when you knew I had serious concerns, you made a bad decision. Call me in the morning.

Sent from my iPhone

> On Apr 24, 2017, at 4:06 PM, Freeman, Jeffrey A <JFreeman@dot.nv.gov> wrote:
>
> that

John Bronder

1. Failure to interact with employees he is responsible for
 - a. Constructability
 - b. Scheduling
 - c. Has not actively become involved in the office, has not sought out additional work assignments, has not initiated making improvements to current processes (post construction reviews, constructability) as directed when hired
2. Inability to follow direction –
 - a. flexing time off during week of Partnering Conference
 - b. did not partake in Construction Manual rewrite project as assigned
 - c. Did not follow direction with learning Consultant program, disappeared for 1.5 hours
3. At Manager level expect above standard performance, more effective integration into the Construction Office

ER 048 000359

000374

Date	Working Hours per his timesheet	Event	# Hours	Notes
Work Week				
2/13/2017	* Do not have access to timesheets for first 2 weeks of work	Start work in Construction Office		*Note: Bronder's working hours were defined as 7am to 4pm, many instances of working 6:30am to 3:30pm
2/17/2017		Construction Manual Rewrite Mtg	6 Manual/ 2 Office	
2/24/2017		Construction Manual Rewrite Mtg	6 Manual/ 2 Office	
Work Week				
2/27/2017	6:30am to 3:00pm	Office	8	Half hour lunch
2/28/2017	7am to 4pm	RE Meeting in LV	8	
3/1/2017	7am to 4pm	RE Meeting in LV		
3/2/2017	7am to 4pm	RE Meeting in LV		
3/3/2017	6:30am to 3:00pm	Construction Manual Rewrite Mtg	6 Manual/ 2 Office	Half hour lunch
Work Week				
3/6/2017	7am to 4:30pm	Office	8.5	
3/7/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/8/2017	7am to 4:30pm	Office	8.5	
3/9/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/10/2017	7:30am to 3:30pm	Construction Manual Rewrite Mtg	6 Manual/ 2 Office	
Work Week				
3/13/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/14/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/15/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/16/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/17/2017	Sick leave	Construction Manual Rewrite	0	
Work Week				
3/20/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/21/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/22/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/23/2017	7am to 4pm	Dispute Resolution Training (Reno)	8	
3/24/2017		Construction Manual Rewrite Mtg	6 Manual/ 2 Office	Finished meetings on Construction Manual Rewrite

ER 049

000360

000375

Date	Working Hours per his timesheet	Event	# Hours	Notes
Work Week				
3/27/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/28/2017	6:30am to 3:00pm	Office	8	Half hour lunch
3/29/2017	8:30am to 5:30pm	Disciplinary Procedure Training	8	Bronder lives in Reno, claims training from 9am to 5pm
3/30/2017	8am to 5pm	Grievance Training (Reno)	4 Train/4 Office	
3/31/2017	6:30am to 3:00pm	Office	8	Half hour lunch
Work Week				
This work week Bronder was instructed to flex his time and not work extra hours to get more time off on Friday since we had the conference which he did anyways without permission				
4/3/2017	6:30am to 4:30pm	Office	9.5	Worked 1.5 hour over normal shift because morning call duty
4/4/2017	6:30am to 5pm	National Partnership Conference-Reno	5.5 Office/4 Partner	
4/5/2017	7:30am to 4:30pm	National Partnership Conference-Reno	8	
4/6/2017	7:30am to 4:30pm	National Partnership Conference-Reno	4 Partner/4 Office	Returned back to CC at 3:00pm because even though call duty
4/7/2017	6:30am to 10:30pm	Office	4	
Work Week				
4/10/2017	8:30am to 5pm	Office	8	
4/11/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/12/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/13/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/14/2017	6:30am to 3:00pm	Office	8	Half hour lunch
Work Week				
4/10/2017	8:30am to 5pm	Office	8	Half hour lunch
4/18/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/19/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/20/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/21/2017	6:30am to 3:00pm	Office	8	Half hour lunch

Date	Working Hours per his timesheet	Event	# Hours	Notes
Work Week				
4/17/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/18/2017	to 10am and 1pm to	Office	6 Office/2 sick leave	
4/19/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/20/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/21/2017	7am to 4pm	Office	8	
Work Week				
4/24/2017	6:30am to 3:00pm	Office	8	Half hour lunch
4/26/2017	Annual leave		0	
4/27/2017	Annual leave		0	
4/28/2017	Annual leave		0	
Work Week				
5/1/2017	Annual leave		0	
5/2/2017	Annual leave		0	
5/3/2017	Annual leave		0	
5/4/2017	Annual leave		0	

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Tasha Eaton

Sent from my iPhone

> On Apr 24, 2017, at 6:33 PM, Foerschler, Sharon L

> <SFoerschler@dot.nv.gov>

> wrote:

>

> Jeff,

> Oh my gosh, are you kidding me??? We need to talk, I did not want him

> to=

sign his evaluation as you had written it! You have now put us in a bad situation as I want him to know we are unsatisfied with his performance to date.

> Why would you proceed with that evaluation for his signature when you

> knew=

w about my concerns??? I am not happy with your decision to move forward with this when you knew I had serious concerns, you made a bad decision.

> Call me in the morning

>

> Sent from my iPhone

>

>> On Apr 24, 2017, at 4:06 PM, Freeman, Jeffrey A <JFreeman@dot.nv.gov>

>> wrote:

>> ote:

>>

>> that

Tasha Eaton

From: Freeman, Jeffrey A <JFreeman@dot.nv.gov>
Sent: Monday, April 24, 2017 4:07 PM
To: Foerschler, Sharon
Subject: RE: Johns review

I had him sign that version, but we had a long discussion about needing to interact with the constructability group and with Mark. I asked him to be more interactive, take over the tracking of who has what job. Hold a staff meeting and be the one in charge. I asked him to look at projects side by side and start interacting with the group and when he sees the group spit balling with a designer to start listening in and join the conversation. As for post construction reviews we are starting down the process to identify the deficiencies, he noted that they are not timely and that causes the lack of info. I gave him my ideas for relaying the info back to Design and constructability. I have asked that he works with Mark comes up with a game plan and report back. Just to give him more guidance in the future I plan on a weekly Monday morning discussion of what is going, I have already put it on our calendars and plan to make it a regular meeting. I think that I just need to give guidance on a regular basis and set his priorities for him. Overall I think things went very well and he is just not the type to be set free and occasionally reeled back in but he requires direction and followup.

I will leave you the evaluation for your signature on your desk.

Thank you,

Jeff

From: Foerschler, Sharon L
Sent: Monday, April 24, 2017 2:55 PM
To: Freeman, Jeffrey A
Subject: Re: Johns review

Jeff,

Looks ok for a first run but please expand with more content. I really want him to get the gist that we are not happy with his lack of non interaction with his staff including not seeking out opportunities to interact with his staff. In short, I'd like him to get the idea that we have concerns about his performance.

Sent from my iPhone

On Apr 24, 2017, at 12:08 PM, Freeman, Jeffrey A <JFreeman@dot.nv.gov> wrote:

Sharon,

I have attached the review for John. I have overall a standard(1.85) but have downgraded him in the post construction reviews and doing plan reviews. His improvement plan is to take a few projects to learn constructability and to develop a process/plan for the post construction reviews.

Jeffrey Freeman, P.E.
Assistant Construction Engineer
Nevada Department of Transportation
1263 S. Stewart Street, Carson City 89712
(775)888-7662 cell (775) 721-9378

Tasha Eaton

From: Foerschler, Sharon <SFoerschler@dot.nv.gov>
Sent: Monday, April 24, 2017 2:55 PM
To: Freeman, Jeffrey A
Subject: Re: Johns review

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Jeffrey Freeman, P.E.

Assistant Construction Engineer
Nevada Department of Transportation
1263 S. Stewart Street, Carson City 89712
(775)888-7662 cell (775) 721-9378

Tasha Eaton

From: Freeman, Jeffrey A <JFreeman@dot.nv.gov>
Sent: Monday, April 24, 2017 12:08 PM
To: Foerschler, Sharon
Subject: Johns review
Attachments: NPD-15R performance eval john bronder docx

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Jeffrey Freeman, P.E.
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Agency Use Only

Central Records Use Only



**STATE OF NEVADA
EMPLOYEE APPRAISAL & DEVELOPMENT REPORT**

*The contents of this report on performance must be discussed between the employee and his or her supervisor
as described in NRS 284.337 and NAC 284.470

1. Employee Name: Last Bronder		First John	Initial N
2. Class Title: Manager I, P.E.		3. Employee ID #: 60088	
4. Dept/Div/Section: NDOT C040 Construction		5. Date Evaluation Due: 6/6/17	
6. Agency # (3 digits): 800		7. Date Next Evaluation Due: 6/6/18	
Home Org # (4 digits): C040		Position Control #: 040004	
8. Probationary/Trial Period (check one): 6 month Probation/Trial: <input type="checkbox"/> 2 nd month <input type="checkbox"/> 5 th month <input type="checkbox"/> Other 12 month Probation/Trial: <input type="checkbox"/> 3 rd month <input type="checkbox"/> 7 th month <input checked="" type="checkbox"/> 11 th month <input type="checkbox"/> Other		OR Permanent (check one): <input type="checkbox"/> Annual <input type="checkbox"/> Other	
9. Work Performance Standards: <input checked="" type="checkbox"/> are an accurate reflection of the position <input type="checkbox"/> will be revised to reflect changes			
10. Overall Rating from Page 2, Number 14 (check one). <input type="checkbox"/> Does Not Meet Standards (DMS)* <input checked="" type="checkbox"/> Meets Standards (MS) <input type="checkbox"/> Exceeds Standards (ES) * If a rating of "Does Not Meet Standards" is given, another evaluation must be completed within 90 days. The rating may affect adjustments in salary based on merit (NAC 284.194)			
Rater's Printed Name: Jeffrey Freeman			
Rater's Signature & Title:		Date: (mm/dd/yy)	
11. Additional Supervisory Review (optional): <input type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)			
Printed Name:			
Signature and Title:		Date: (mm/dd/yy)	
12a. Date employee received evaluation document: _____ Employee's Initials: _____ (Does not indicate agreement or disagreement)			
b. Employee Response: NAC 284.470 requires that you complete the section below and sign the report on performance within 10 working days after discussion with your supervisor <input type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> Request Review* (If you disagree with the report <u>and</u> request a review, you must specify the points of disagreement below or attached.)			
c. Employee Signature:		Date evaluation returned to supervisor:	
13. Appointing Authority Review: <input type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)			
Appointing Authority's Printed Name:			
Appointing Authority Signature & Title:		Date: (mm/dd/yy)	

* Note -- Reviewing Officer uses form NPD-15R to respond to employee's request for review as outlined in NAC 284.470

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Employee Evaluation & Development Report – Page 2

Employee Name: (Last)	(First)	(Initial)
Employee ID #.		

14. Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A)) <i>Please note that whole number ratings are used, not fractions, to rate individual job elements.</i>	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #1: Supervise and train the Constructability and Project Scheduling Staff and assign tasks to accomplish Division responsibilities and Department goals.	2	15%	.3
Job Element #2: Review plans, specifications and special provisions for accuracy, completeness and constructability providing recommendations as needed. Calculate Liquidated Damages, Construction Engineering Budget and User Costs for all construction projects. Actively assist the Project Coordinators in answering contractor questions submitted during the bidding period.	1	10%	.1
Job Element #3: Manage the Division's scheduling program. Generate Time Determination Schedules (TDS) to determine working days. Manage the scheduling training for the Resident and Assistant Resident Engineers on the Department's latest version of scheduling software. Analyze contractor schedules for compliance with contract documents and assist with resolving contractor scheduling issues in a timely manner.	2	10%	.2
Job Element #4: Attend various meetings including Project Status, Design/Construction, Cost Risk Analysis and Value Engineering. Utilize information and decisions made in these meetings to prioritize workload and implement changes to programs and contract documents as recommended.	2	10%	.2
Job Element #5: Serve as an active member of the Bid Review Analysis Team (BRAT). Analyze contractor bids for compliance with Department requirements for responsive bidders and provide recommendations for award of all construction contracts. Inform the Resident Engineer of potential contractual issues discussed at the BRAT meeting.	2	5%	.1
Job Element #6: Manage Post Construction Review Meetings and ensure reports are generated with findings and recommendations. Generate Semi-Annual reports summarizing findings and recommendations for implementation on future projects.	1	5%	.05
Job Element #7: Manage the tracking of contract modifications to identify field issues and resolutions for future construction contracts.	2	5%	.1
Job Element #8: Generate and manage the travel budget for staff. Assist the Chief with budgetary tasks including Construction Engineering cost estimation for projects to meet the Department's Performance Measure target.	2	5%	.1
Job Element #9: Assist the Chief and Assistant Construction Engineers on special projects as assigned.	2	5%	.1

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Employee Evaluation & Development Report – Page 3

Employee Name: (Last)	(First)	(Initial)
Employee ID #:		

14. Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS, 2 = MS; or 3 = ES for each job element in column (A) <i>Please note that whole number ratings are used, not fractions, to rate individual job elements.</i>	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #10: Communication	2	10%	.2
Job Element #11: Teamwork	2	10%	.2
Job Element #12: Responsiveness	2	10%	2
Overall Rating (Scale: 1 to 1.50 = DMS; 1.51 to 2.50 = MS; 2.51 to 3 = ES) (A "does not meet standards" rating may affect adjustments based on merit (NAC 284 194) Another evaluation must be completed within 90 days (NRS 284 340))			1.85

15. Rater's Comments: (A "does not meet standards" rating for any job element must include a detailed explanation of the deficiencies)
John, You have been in our office for a couple of months and I appreciate your help, and thank you for volunteering to step up for the consultant side. I have given you a below standard in a couple of critical areas. First one was the plan reviews Your section while self-sufficient could use the help to lighten their load and you will not be able to fully understand what they do until you do it as well. The second area is in the post construction reviews, it was agreed upon to allow you and Mark some time prior to looking into the review process, that time has passed and we need to have you focus on this I have not seen much interaction and if you do not initiate the interaction it will not happen.

16. Development Plan & Suggestions: (The supervisor will address how the employee can enhance performance and achieve standards, indicates recommendation for further development and training This section shall be discussed with the employee.)

Please work on the following areas, We need to develop a method for the post construction reviews to become a useful tool, the information is not being captured in the review and then transferred back to Design, Management is here to support change to the post construction process and will help you if you would like, but we feel that you can create the change Please schedule time with Mark to begin looking at the process and together develop a plan for improvement, please report back to management on your plan once you have developed it Also please integrate into the constructability section, take a project or two from the beginning and learn the entire process, sit down with the section on a regular basis to find out what they are working on and what help they need from you, jump into the round table discussions when you see they are working with a designer on a project As the Constructability manager you should have a couple of project that are yours at any one time, and you should be familiar with all projects, know the teams, know the dates, and have an idea of the major issue on any project.

17. Merit Award Program: (Provide information to employee relating to the Merit Award Program established in NRS 285 020) Please check method(s) used.

☐ Employee Handbook ☐ State Human Resource website ☐ Other (List details) _____
<http://hr.nv.gov/>

Distribution: Original to Division of Human Resource Management; Copy to Agency; Copy to Employee

NPD-15
Rev. [11/15]

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