



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
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**Meeting Minutes of the Employee-Management Committee
October 18, 2018**

Held at the Nevada State Library and Archives Building, 100 N. Stewart St., Conference Room 110, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Guy Puglisi - Chair	X
Ms. Jennifer Bauer	X
Ms. Pauline Beigel	X
Mr. Ron Schreckengost	
Ms. Sandie Ruybalid	

Employee Representatives

Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	X

Staff Present:

Ms. Tiffany Breinig, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Ivory Wright-Tolentino, EMC Hearing Clerk

1. Call to Order

Chair Puglisi called the meeting to order at approximately 9:00 am.

2. Public Comment

There were no comments from the audience or Committee Members.

3. Committee introductions and meeting overview and/or update - For discussion only.

Chair Puglisi opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

Chair Puglisi requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.

BY: Member Sherri Thompson

SECOND: Member Sonja Whitten

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

5. Discussion and possible action related to Grievance #5754 of Kellen Prost, Department of Corrections – Action Item

Ms. Prost was present and represented by Joshua Buck (“Mr. Buck”). The State of Nevada, Department of Corrections (“NDOC”) was properly noticed of the hearing, but not present. Ms. Prost submitted exhibits, to which there were no objections. NDOC did not submit exhibits or evidence for review by the EMC in this matter. NDOC Correctional Nurse, Kathleen Henderson (“Ms. Henderson”) was present on behalf of Ms. Prost in order to provide testimony in the matter. Ms. Prost and Ms. Henderson were duly sworn in and testified at the hearing.

STATEMENT OF THE CASE

Ms. Prost is employed with NDOC as a Correctional Nurse II (“CN II”) at Northern Nevada Correctional Center (“NNCC”). Mr. Buck argued in substance that the issue presented before the EMC is a legal question of whether NDOC nurses are entitled to overtime pay for pre- and post-shift activities.

Mr. Buck noted in substance that after Ms. Prost arrives to work at NNCC, she must walk to the gatehouse and pass through security. Mr. Buck clarified that Ms. Prost is not alleging that she should be paid for that time. Mr. Buck further stated in substance that Ms. Prost then signs-in to a logbook and collects keys before proceeding to her assigned work station. Once she arrives at the medical clinic, Ms. Prost is required to unlock several doors before her shift officially begins. Mr. Buck stated in substance that all of these pre-shift duties, from signing-in and picking up the keys to the start of her shift, take approximately fifteen (15) minutes to complete. Additionally, Mr. Buck noted in substance that during the approximate fifteen (15) minutes of pre-shift duties, Ms. Prost is required to respond if there is a medical emergency. Mr. Buck argued in substance that the process is the same at the end of the day, wherein Ms. Prost spends approximately fifteen (15) minutes on post-shift duties until she returns the keys and signs-out of the logbook. Ms. Prost works a variable forty (40) hour work week and is not compensated for the pre- and post-shift duties amounting to approximately thirty (30) minutes of additional work per shift.

Mr. Buck stated in substance that NDOC appears to be sympathetic to Ms. Prost, as the grievance acknowledges that these pre- and post-shift duties take place; however, it is NDOC policy not to compensate Ms. Prost for that time. However, Mr. Buck argued in substance that the Fair Labor Standards Act (“FLSA”) and Nevada Revised Statutes (NRS) 281.100 entitle Ms. Prost to overtime payment for these pre- and post-shift duties.

Directing the EMC to Exhibit 8, Mr. Buck referenced a case in the United States Court of Appeals for the Sixth Circuit, wherein the Court examined steps to determine whether activity is compensable, and based on a similar analysis, Mr. Buck argued in substance that Ms. Prost’s pre- and post-shift duties are compensable. Specifically, Mr. Buck noted in substance that Ms. Prost’s collection of keys in furtherance of her job is compensable pursuant to Title 29 of the Code of Federal Regulations (“C.F.R.”) Section (“§”) 785.38, which addresses time spent by any employee in travel as part of his or her principal work activity. Mr. Buck also argued in substance, citing to U.S. Supreme Court case *Integrity Staffing Solutions, Inc. v. Busk*,¹ that Ms. Prost’s collection of the keys is integral and indispensable to her job, and is therefore compensable. Further, Mr. Buck argued in substance that pursuant to NRS 281.100(2), Ms. Prost’s compensable time begins when she takes charge of equipment, or collects the keys.

Mr. Buck argued in substance that any argument from NDOC claiming that NRS 281.100 does not apply because Ms. Prost works a variable hour work week runs afoul of the FLSA. Mr. Buck stated in substance that 29 CFR § 553.211(g) specifically exempts medical personnel from falling under a variable hour work week, and therefore, Ms. Prost is eligible for overtime payment where her hours equal over forty (40) in a week or over eighty (80) biweekly.

In closing, Mr. Buck noted in substance that NDOC failed to appear at the hearing and declined to provide any evidence for the EMC to review. Mr. Buck requested Ms. Prost’s grievance be granted, or in the alternative, the EMC decline jurisdiction of the grievance, allowing Ms. Prost to proceed with this matter in court.²

In response to questioning, Ms. Prost and Ms. Henderson testified in substance that NDOC requires all nurses to sign a form indicating that they will work a variable hour schedule. Mr. Buck argued in substance that an employee must be paid overtime regardless of whether the employee voluntarily chooses to or is required to work a variable hour work week by their employer. In further response to questioning, Mr. Buck noted in substance that an employer can modify shifts to include these pre- and post-shift duties.

Ms. Prost, in response to questioning, testified that she has been employed with NDOC for over four (4) years and this issue has been raised several times to no avail. However, this is the first grievance Ms. Prost has filed regarding this issue.

The EMC discussed and deliberated on the matter. Committee Member Beigel stated in substance that pursuant to NAC 284.678, a grievant must submit a

¹ 135 S. Ct. 513, 190 L. Ed. 2d 410 (2014).

² Ms. Prost is a named Plaintiff in a class action lawsuit that was filed in the First Judicial District Court of the State of Nevada in and for Carson City alleging failure to pay overtime in violation of 29 U.S.C. § 207 and failure to pay overtime in violation of NRS 284.100. *Prost v. State of Nevada, ex rel. NDOC*, Case No, 18 OC 00131 1B.

grievance within twenty (20) working days after the date of the event leading to the grievance or within twenty (20) working days of the grievant learning of the event leading to the grievance. Accordingly, Committee Member Beigel indicated hesitancy in considering the three (3) years prior to filing the grievance in deliberations of this issue. Committee Chair Puglisi added in substance that he agreed, and the EMC should determine what pre- and post-shift activities, if any, are compensable under the law. Committee Member Bauer agreed in substance and clarified in substance that Ms. Prost must unlock several doors into the medical clinic, including supply and exam rooms, as well as respond to medical emergencies that arise before she begins her shift.

Committee Member Russell stated in substance that compensable time should begin when Ms. Prost signs-in to the logbook and picks up the keys and ends when she returns the keys and signs-out of the logbook because those activities are job requirements, in which Ms. Prost is on duty. Committee Chair Puglisi stated in substance that pursuant to 29 C.F.R. § 785.24, the keys are an integral part of Ms. Prost's principal work activities because she needs the keys to enter the medical clinic to perform her job. Committee Member Bauer agreed and noted in substance that Ms. Prost cannot do her job without the keys to open the doors and obtain medicine to treat inmates. Committee Member Bauer further agreed in substance that signing-in to the logbook and collecting keys are integral parts to Ms. Prost's work assignment. However, Committee Member Bauer concurred with Committee Member Beigel and noted in substance that she was uncertain whether the EMC had the ability to provide relief beyond the event date of the grievance, which demonstrates the injustice suffered by Ms. Prost.

Committee Chair Puglisi agreed in substance, noting that it is beyond the EMC's jurisdiction to consider the matter prior to the event date of the grievance. A motion was made by Committee Member Russell to grant the grievance, finding that compensable time of the shift begins at the time Ms. Prost signs-in and collects keys and ends when she returns the keys and signs-out pursuant to NRS 281.100(2), 29 C.F.R. § 785.24, and 29 C.F.R. § 785.38. The motion also indicated that Ms. Prost should receive payment for such compensable time beginning May 25, 2018, as the event date of the grievance, forward. The EMC voted unanimously to grant the grievance.

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, and the briefs, evidence, and other documents on file in this matter, the EMC makes the following findings of fact. All findings made are based upon a preponderance of the evidence.

1. Grievant is a Correctional Nurse II at the Northern Nevada Correctional Center within the Nevada Department of Corrections, and was employed as such at the time of her grievance.
2. Grievant was a non-exempt State of Nevada employee.
3. Grievant is required to sign-in to a logbook and collect keys prior to proceeding to her assigned work station. At the end of her shift, Grievant is required to return keys and sign-out of the logbook. These pre- and post-shift duties take approximately fifteen (15) minutes each to complete, for a total of approximately thirty (30) minutes per shift worked.

4. Grievant is also required to respond to medical emergencies after signing-in to the logbook and before signing-out of the logbook, should the need arise.
5. Grievant is unable to complete her scheduled work assignment without first signing-in to the logbook and collecting keys that open the doors to and throughout the medical clinic.
6. Grievant is not compensated for these pre- and post-shift activities.
7. Grievant noted an event date of May 25, 2018, on her grievance related to this instant matter.

CONCLUSIONS OF LAW

1. For this grievance, it was Grievant's burden to establish that her pre- and post-shift duties are compensable.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. A grievance is any act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee. NRS 284.384(6).
4. Ms. Prost's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. Pursuant to NRS 281.100(2), an employee's shift starts from the time the employee takes charge of any equipment of the employer.
6. Pursuant to 29 C.F.R. § 785.24, principal activities that are an integral part of employee's job are considered work and as compensable.
7. Pursuant to 29 C.F.R. § 785.38, where an employee is required to report at a meeting place to pick up and carry tools, the travel from such place to the actual work station is part of the day's work and must be included as hours worked.
8. Grievant's shift begins when she signs-in to the logbook and takes charge of equipment or collects the keys, which is an integral part of, and indispensable to her work assignment.
9. The time it takes for Grievant to travel from the place she signs-in and collects the keys to her actual work station is part of her day's work. The time it takes for Grievant to travel from her work station to return the keys and sign-out is also part of her day's work.
10. The pre- and post-shift duties involving signing-in and out of the logbook, as well as collection and return of the keys are compensable time, in which Grievant is entitled to payment.
11. Pursuant to NAC 284.678, a grievant must submit a grievance within twenty (20) working days of an event date leading to the grievance. The EMC will not consider matters prior to the event date of the grievance.
12. Grievant is entitled to payment for her pre- and post-shift duties from May 25, 2018, the event date of her grievance, forward.

DECISION

Based upon the evidence in the record, and the foregoing findings of fact and conclusions of law, and good cause appearing therefor, it is hereby ORDERED:

Ms. Prost's grievance is GRANTED,³ and she shall receive compensation for all aforementioned pre- and post-shift activities beginning May 25, 2018, forward.

MOTION: Moved to grant the grievance, finding that compensable time of the shift begins at the time the grievant signs-in and collects keys and ends when she returns the keys and signs-out

BY: Member Turessa Russell

SECOND: Member Sonja Whitten

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

6. Discussion and possible action related to Grievance #5735 Lauren Wing, Department of Corrections – Action Item

Chair Puglisi stated he would allow the Committee a few minutes to review the packet.

Member Bauer stated she wanted to go on record that she is aware of this situation at the Department of Corrections with this group of staff due to her efforts as a mediator for the Division of Human Resource Management.

Member Bauer stated since this was not a full hearing and just to consider whether the matter can be answered without hearing, she could remain neutral and impartial on this case.

Chair Puglisi stated if at any time, there is an actual or perceived conflict of interest, Member Bauer could abstain from voting.

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated the employee's proposed resolution is for the agency to create a regulation asking for accountability for someone else's actions for unprofessional behavior and to allow staff to participate in the creation of regulations for the agency.

Chair Puglisi stated the agency has the right to run its business as it sees fit per NRS 284.020(2).

Chair Puglisi stated the grievance states the agency claims staff already has an opportunity to provide input on new regulations and the EMC could not dictate otherwise even if the employees did not.

Chair Puglisi stated he did not believe the Committee has jurisdiction to instruct an agency to discipline a third party for their actions.

Chair Puglisi stated being a grievance is defined as an injustice to the employee, he did not see where the employee had suffered an injustice.

Member Bauer stated she agreed with Chair Puglisi.

Member Russell stated she did not believe the Committee was limited to the proposed resolutions and there had been multiple instances where the

³ Committee Member Turessa Russell's motion to grant the grievance was seconded by Committee Member Sonja Whitten and carried by a unanimous vote in favor of the motion.

Committee had been able to come up with something other than what the employee had proposed and still stayed within the Committee's jurisdiction.

Chair Puglisi stated if Member Russell saw something in the grievance the Committee should be looking at to please point that out.

Member Beigel stated she was confused as to whether or not there is an organization, or chain of command which was proposed resolution #1, and there was confusion in the grievance 'who do I report to; who do I take direction from.'

Member Beigel referenced page 1 Proposed resolution #1 "create an AR that shows clearly defined rolls" and stated when the Committee is reading the grievance, there may be confusion to who the employee is supposed to listen to and stated that would be something the Committee could hear.

Member Russell stated in addition to Member Beigel's statement, in part of the response on page 2, there seems to be conflict between the two types of staff: medical and psychological.

Member Russell stated it may be worth moving to hearing to get the specifics on what is going on and determine if the EMC can or should do anything.

Chair Puglisi stated moving forward it is important the Committee look at these grievances and if the EMC has already determined, based on the information provided, that there is not going to be relief the EMC can provide, he did not personally feel the Committee should schedule a hearing, make all parties go through the process; preparing packets, subpoenaing witnesses and going through the hearing itself, if the Committee can't get anywhere.

Chair Puglisi stated it is important the Committee identify that issue, "if the Committee heard these issues, what could we do?"

Chair Puglisi stated if there was a personnel conflict and the employee was reprimanded or if they were reassigned, in this case the employee has a conflict, but they did not get reprimanded, what could the Committee do?

Chair Puglisi stated if the employee received a reprimand and it wasn't right, the Committee could certainly uphold the grievance and request the reprimand be removed.

Member Russell stated on page two of the grievance, there are statements the two types of staff are having issues and in this particular case, there is a possibility of a climate study to determine what is going on and if it is a culture or climate issue in the overall Department or between the two Departments.

Chair Puglisi stated Psychiatrist Dr. Lee stated she feels she is being bullied by somebody else, but like the last grievance the Committee can't adjudicate a grievance based on somebody else doing something to somebody else and then filing a grievance.

Chair Puglisi stated the Committee should keep to what injustice has this employee suffered, if any.

Member Thompson stated there is confusion about the chain of command and

the grievant is asking for clarification so if nothing else, the Committee could address that issue.

Chair Puglisi asked, what the Committee could do as the Committee can't force the agency to create a policy, the Committee can't compel the agency to act a certain way unless there is a regulation or statute that states the agency must do something.

Chair Puglisi stated if there is a regulation that states every agency must have a organization (org.)chart outlining the chain of command and an agency didn't do that, the Committee could say 'you aren't following that regulation.'

Member Thompson stated that was her point wondering *if* the agency has a chain of command and *is* it communicated to employees.

Member Beigel stated the Committee doesn't know if an org. chart is required or if there is an NRS, NAC or AR that would cover that without going to hearing.

Member Beigel stated without having all of the facts she believed this was something the Committee could hear based on resolution #1.

Member Thompson stated she felt the Committee needed more information.

Member Beigel stated the grievance should go to hearing so the Committee could get the facts.

Member Thompson agreed.

Member Beigel stated Corrections is the type of agency where one would think there is an org. chart so employees know who to report to and who is giving direction.

Member Beigel stated employees need to know who is in command in the event of an accident or emergency and having clear direction is important.

Member Beigel stated she did not know if there was an AR or NAC regarding org. charts for Corrections but when you look at an org. chart for any agency, very few agencies do *not* have an org. chart on the internet let alone internally which is why the resolution #1 could be something for the Committee to hear.

Member Bauer stated in her experience working at the Department of Public Safety, the chain of command was clear and there didn't need to be a policy stating who was in command.

Member Bauer stated with the State Budget Act and the submission for agency request budget, a requirement is that an org. chart be included.

Member Bauer stated based on that, there is probably an org. chart for Corrections and she would imagine that it exists in a manner that could be shared with staff.

Member Bauer stated she did not know if the EMC could compel the employer to make sure employees know who they work for and she did not think the EMC could compel the agency to share the org. chart.

Member Bauer stated although that needed to happen, and may not have, going to a full hearing would provide that relief to the grievant.

Member Beigel stated the Committee keeps saying 'I don't know' and I don't know either which is the reason why the grievance should go to hearing.

Member Bauer stated if the Committee did move the grievance to hearing and it was testified by the grievant or the employer or both the org. chart was not clearly communicated, is the EMC in a position to compel the employer to communicate the chain of command to staff.

Member Beigel stated Member Bauer said the Budget Office requires an org. chart (clarification).

Chair Puglisi stated he was not familiar with this type of environment, but there are subordinate supervisors and there are subordinate staff.

Chair Puglisi stated if one of his subordinate supervisors, whether they are the persons direct supervisor or not, gives someone an instruction, that person is expected to follow it.

Member Beigel stated if there is a chain of command, there are certain people that only report one way and there could be two different lines of chain of command.

Member Beigel stated the Committee doesn't know without the facts, which is why the grievance should go to hearing.

Chair Puglisi stated the grievance stated the employee was being transferred, but he did not know if that happened.

Member Russell stated she did not think the EMC is limited to violations by the employer or agency.

Member Russell stated there have been times when the Committee has educated the employee in reference to a grievance issue.

Member Russell stated there were comments in the grievance where the grievant may be in need of additional training or additional information on how to properly fill out documentation as part of their job.

Member Bauer asked if the Committee moves the grievance to hearing, gather the facts from the employee and employer, whether the employee was made known of the chain of command and certain other comments made, at the end of the hearing, can the EMC compel the employer to communicate in a certain way and can the EMC compel the employer to comply with law, regulation, policy or directives by the State Budget Division.

Chair Puglisi stated if there is a regulation or statute that they are supposed to be following, the EMC can say 'they should be following that'.

Chair Puglisi stated the Committee sees this all the time. The next grievance on the agenda, someone is saying they are contesting an LOI (Letter of Instruction) but they don't attach a copy of it.

Chair Puglisi stated instead of all the narrative, grievances should get right to the point.

Chair Puglisi stated if the Committee starts scheduling hearings based only on narrative, shouldn't the grievant have to put what they are grieving in the grievance.

Chair Puglisi stated this looks like the employee does not like their supervisor, but did they actually suffer an injustice.

Member Beigel stated that on page three from the end the grievance stated "I will not risk my professional reputation or my license." The employee was in fear of losing their professional license and it could be more damaging if the Committee did not hear it.

Member Whitten stated she did agree that if an employee is not sure of whom they are reporting to or taking direction from it can be confusing.

Member Whitten stated it did sound like there are two different disciplines within Corrections, the psychology side and the medical side and if you are a supervisor in psychology, but you work in medical and give direction that contradicts what the medical supervisor requests, who do the employees follow, how does that get resolved.

Member Whitten stated those kinds of answers are why the Committee should move the grievance forward.

Chair Puglisi stated if the grievant got in trouble for not following direction, that would make sense, but it seems there is an overwhelming majority to hear the grievance.

Chair Puglisi asked if anyone was ready to make a motion.

Member Whitten moved to grant hearing for grievance #5735.

Member Beigel seconded Member Whitten's motion.

Chair Puglisi asked if there was any discussion, there was none.

MOTION: Moved to grant hearing for grievance #5735
BY: Member Sonja Whitten
SECOND: Member Pauline Beigel
VOTE: The vote was 4 to 2 in favor of the motion, with Chair Puglisi and Member Bauer voting 'nay'.

7. Discussion and possible action related to Grievance #5829 of Maria Lourdes-Blanco, Department of Corrections – Action Item

Chair Puglisi stated he would allow the Committee a few minutes to review the packet.

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated a letter of instruction was requested, but not provided by the grievant and if the Committee had a copy, the Committee would have a clear picture.

Chair Puglisi the only time the Committee can address a letter of instruction is if the letter of instruction makes a reference to disciplinary action.

Member Bauer stated because the Committee does not have a copy of the letter of instruction and cannot determine if it mentions discipline, this grievance should move to hearing.

Member Russell stated she agreed with Member Bauer and the grievance should move to hearing to get the facts pertaining to this situation.

Chair Puglisi asked if anyone was ready to make a motion.

Member Beigel moved to grant hearing for grievance #5829.

Member Whitten seconded Member Beigel's motion.

Chair Puglisi asked if there was any discussion, there was none.

MOTION: Moved to grant hearing for grievance #5829
BY: Member Pauline Beigel
SECOND: Member Sonja Whitten
VOTE: The vote was unanimous in favor of the motion.

8. Public Comment

There was no public comment in the North or in the South.

9. Adjournment

Chair Puglisi adjourned the meeting at approximately 11:35 am.