



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
Phone: (775) 684-0135 | <http://hr.nv.gov> | Fax: (775) 684-0118

Meeting Minutes of the Employee-Management Committee
November 13, 2014

Held at the Grant Sawyer Building, 555 E. Washington Ave., Room 1100, Las Vegas, Nevada, and the Bryan Building, 901 S. Stewart St., Tahoe Conference Room, Carson City, Nevada, via videoconference.

Committee Members:

| Management Representatives | Present |
|------------------------------------|----------------|
| Mr. Mark Evans—Chair | |
| Ms. Mandy Payette—Co-Vice-Chair | |
| Ms. Bonnie Long | |
| Ms. Claudia Stieber | X |
| Ms. Allison Wall | X |
| Ms. Michelle Weyland | |
| Employee Representatives | |
| Ms. Stephanie Canter—Co-Vice-Chair | X |
| Ms. Donya Deleon | X |
| Mr. Tracy DuPree | |
| Mr. David Flickinger | |
| Ms. Turessa Russell | |
| Ms. Sherri Thompson | |

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator
Ms. Jocelyn Zepeda, Hearing Clerk

- 1. Co-Vice-Chair Canter:** Called the meeting to order at approximately 9:30 a.m.

2. Public Comment

An unidentified member of the public asked if a decision by the body was subject to judicial review. Deputy Attorney General Robert Whitney responded that it was his understanding was that decisions may be appealed in certain circumstances.

3. Adoption of the Agenda – Action Item

Co-Vice-Chair Canter requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.

BY: Committee Member Claudia Stieber

SECOND: Committee Member Allison Wall

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

4. Discussion and possible action related to motion to dismiss of Grievance of Laura Sottile, submitted by the Department of Health and Human Services, Division of Public and Behavioral Health, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC” or “Committee”) by the agency employer Department of Health and Human Services, Division of Public and Behavioral Health, Southern Nevada Adult Mental Health Services (“DHHS”) which was represented by Deputy Attorney General Susanne Sliwa (“Ms. Sliwa”). Laura Sottile (“Ms. Sottile” or “Grievant”) was originally present in proper person but then Daniel Gillery (“Mr. Gillery”) began representing Ms. Sottile.

DHHS argued in substance that Ms. Sottile’s proposed resolution to be permitted to avoid contact with the co-worker who she alleged bullied and intimidated her, and that the co-worker be reprimanded, was beyond the authority of the EMC to grant, therefore, the EMC did not have jurisdiction to hear the grievance. DHHS argued in substance that the decision of which employees worked with each other involved the agency and its officers managing the affairs of the agency as they saw fit, and as such fell within action allowed pursuant to NRS 284.020. Ms. Sliwa stated in substance that DHHS representatives had met with Ms. Sottile, and that the representatives told Ms. Sottile that due to staffing and safety concerns for patients at the psychiatric hospital where Ms. Sottile worked, Ms. Sottile could not completely separate herself from the co-worker with whom she allegedly had the conflict. Additionally, DHHS argued in substance that whether or not DHHS disciplined an employee was confidential pursuant to NAC 284.718(j).

Ms. Sottile argued in substance that the Director of Nursing had the authority to separate nurses when situations similar to the one she had experienced occurred, and that she felt that it was sometimes necessary to separate employees when they came into conflict, similar to the way it was sometimes necessary for nurses to separate hospital patients who came into conflict. Additionally, Ms. Sottile stated in substance that the staffing of the facility where she worked had been

restructured several times, and that nurses had been placed in all different areas of the hospital for various reasons. Ms. Sottile stated in substance that for her own safety and to prevent further conflicts with her co-worker, it was necessary to separate her from her co-worker. Mr. Gillery concluded Ms. Sottile's argument by stating in substance that he hoped the EMC would take the opportunity to hear the grievance.

The Committee considered the evidence and arguments of counsel, and the parties; and deliberated on the record. Committee Member Claudia Stieber stated in substance that the subject matter of the grievance fell outside of the jurisdiction and purview of the Committee because the Committee did not have the authority to tell an agency how to run its affairs or to make sure that an agency employee was disciplined. Committee Member Allison Wall stated that she also felt that the matter was outside of the Committee's jurisdiction because the Division of Human Resource Management was the place where hostile work environment claims were investigated. Co-Vice-Chair Canter stated in substance that she did not see anywhere in the agency's responses to Ms. Sottile where she had been directed where to go to address allegations of bullying and a hostile work environment. Committee Member Wall noted that the agency's Bullying Prevention Policy included an Incident Report Form ("Form"), and that it appeared from the Form that an investigation would occur, and that the EMC did not know if that had occurred, and if it had, if DHHS had followed through. Co-Vice-Chair Canter stated that the EMC looked to see whether or not a policy was violated and if the agency failed to direct the employee to the appropriate place to resolve her grievance. Co-Vice-Chair Canter continued that if the agency had a policy regarding no bullying, then the agency needed to follow its policy when a bullying complaint was made. Committee Member Wall stated in substance that granting Ms. Sottile's hearing request would be a check and balance and a way to see if the agency actually followed its policy.

Co-Vice-Chair Canter requested a motion.

MOTION: Moved to deny the motion to dismiss because although the Committee may not have the authority to grant the remedies Grievant requested, the grievance needed to be looked at further to determine if DHHS violated any policy.

BY: Co-Vice-Chair Stephanie Canter

SECOND: Committee Member Allison Wall

VOTE: The motion passed with a 3:1 majority vote. Co-Vice-Chair Stephanie Canter, Committee Members Allison Wall and Donya Deleon voting for, and Committee Member Claudia Stieber voting against.

5. Adjustment of Grievance of Patrick Rassier #3235, Department of Health and Human Services, Division of Child and Family Services – Action Item

The agency employer Department of Health and Human Services ("DHHS"), Division of Child and Family Services ("Division") was represented by Division Human Resource Officer Darren Squillante ("Mr. Squillante"). Patrick Rassier ("Mr. Rassier" or "Grievant") was present in proper person.

The exhibits submitted to the EMC prior to the hearing were marked for entry. Mr. Squillante objected to any testimony by Jason Holm (“Mr. Holm”), based on the fact that the Division had no authority concerning anything other divisions had done, with respect to Mr. Holm’s compensation or salary adjustments he may have received. Mr. Rassier stated in substance that Mr. Holm had contacted him and said that he was ill, and therefore would not be testifying at the hearing. Mr. Rassier also stated that one of the points in his grievance was that DHHS was inconsistent as a whole, with respect to granting equity pay requests. Co-Vice-Chair Canter sustained the objection based on the fact that Mr. Rassier was in a different agency than Mr. Holm, so the Committee would not have any of the relevant documents needed for it to know why the decision to grant Mr. Holm’s equity pay request was granted.

Mr. Rassier testified at the hearing. Additionally, witnesses Angelica Gonzalez (Ms. Gonzalez”), Personnel Analyst III from the Department of Administration, Division of Human Resource Management (“DHRM”); DHHS Deputy Administrator Danette Kluever (“Deputy Administrator Kluever”); and Administrative Services Officer IV with the Division Jeffrey Morrow (“Mr. Morrow”) were sworn and testified at the hearing.

Mr. Rassier stated he was an ASO (“ASO”) III with the Division and on March 3, 2013, he submitted an equity pay request which was denied because DHHS was not granting such requests. Mr. Rassier stated he did not grieve this denial because he felt at the time he was being treated the same as everyone else. Mr. Rassier stated in substance that he later learned that Mr. Holm, who was formerly a subordinate of Mr. Rassier, had submitted a request for an equity pay adjustment during the last fiscal year, and was approved. Mr. Rassier testified that as a result of that event, he resubmitted his request on June 2, 2014, and his request was denied by the Division. Mr. Rassier stated that the Division, in its denial of his request, stated that granting his request would cause a great financial impact and cause discrepancies among Division employees. Mr. Rassier argued in substance that the Division and DHHS had established a past practice of approving equity pay requests on an individual basis, and that the Division and DHHS had previously approved requests for equity pay adjustments within his administrative service office, including requests from Mr. Morrow, Sean Young, and Mr. Holm. Mr. Rassier testified that after approving these equity pay requests, neither the Division nor DHHS made any sweeping attempts to try and equitably adjust the pay of every other employee in the respective agencies who were in a similar situation to the employees whose requests had been approved. Mr. Rassier added in substance that if DHHS and the Division had adjusted every applicable employee’s salary when it approved one employee’s equity pay request then he would have had no grievance since his pay would have already been adjusted. Mr. Rassier also alleged that despite the Governor’s Emergency Budget Memo (“Emergency Memo”) from 2010, DHHS continued to approve pay adjustments within his division. Mr. Rassier alleged that Robert Handwerker (“Mr. Handwerker”), another former subordinate of his, had left the Division and was later rehired by DHHS at an adjusted step. Mr. Rassier argued in substance that such inconsistent applications of pay adjustment by DHHS gave other agencies within DHHS an

advantage over the Division by increasing the potential of other agencies within DHHS to lure away Division employees. Mr. Rassier noted that the Division had large reversions and stated that the primary reason for this was because of personnel savings. Mr. Rassier pointed out that he had conducted his own equity pay analysis on June 23, 2014, which he included as Employee Exhibit 4. Mr. Rassier stated that according to his analysis, if every equity pay candidate in the Division was given an equity pay adjustment, the impact would not exceed six percent of the Division's total average reversion. Mr. Rassier went on to state in substance that over the past five fiscal years, the agency had an average annual reversion of 1.6 million dollars. Mr. Rassier additionally noted that the Division was going to argue that his request for an equity pay adjustment involved the supervision of employees who had more years of experience with the State than he had but, he argued, it was under the exact same circumstances that the Division had approved Mr. Morrow's request for equity pay.

Mr. Squillante stated that Mr. Rassier was a valuable and appreciated employee for the Division, and that the agency could understand the impact the State's fiscal constraints had on all its employees. Mr. Squillante stated in substance that in the Emergency Memo, the Division had been given directives that included limiting many fiscal and salaried programs that previously were available. Mr. Squillante argued in substance that in light of that fact, the real question before the Committee was, did NAC 284.204's adjustment to step increases allow an individual to submit a request for a salary adjustment under that section, and if so, did it mandate that an agency must adjust an employee's steps for supervising a long term, tenured employee whose salary was higher than the individual's salary who was making the request? Mr. Squillante argued that the Division believed, and the evidence would show, that NAC 284.204 provided the appropriate appointing authority the discretion and flexibility to request salary adjustments and nothing in that NAC required an agency to submit a salary adjustment. Additionally, Mr. Squillante argued in substance that the evidence would show that the Division had complied with NAC 284.204 as well as the Governor's directive in the Emergency Memo and instructions from DHRM related to the situation, and that the Division had been fair and equity in the matter. Mr. Squillante stated that the Division had not given salary adjustments to any employees within the Division who were supervisors supervising employees earning a higher salary than their own.

Mr. Morrow testified that he had received an equity pay increase as an ASO III in either 2006 or 2007. Mr. Morrow further testified that another ASO with DHHS in the Division of Aging and Disability Services, Mr. Holm, had received an equity pay increase in the previous fiscal year. Additionally, Mr. Morrow testified in response to questioning that to his knowledge, in response to Mr. Holm's equity pay adjustment, the Division had not equitably adjusted the pay of every employee in the Division. Furthermore, Mr. Morrow testified in substance that Mr. Handwerker had been rehired as a Management Analyst IV after the Emergency Memo had been issued in February 2010, and that as a condition of Mr. Handwerker returning to the Division, he had received an adjusted step, to a step 10. Mr. Morrow added in substance that after Mr. Handwerker was rehired, the Division did not seek to adjust the pay of other management analysts, and that he was not aware of any major pay adjustments

that occurred in either the Division or DHHS that had been triggered by an accelerated pay request or an adjusted step upon hiring. Upon questioning by Mr. Squillante, Mr. Morrow stated that he received his equity salary adjustment in either 2006 or 2007, and that the administrator for the Division at that time was Diane Comeaux. Mr. Morrow further testified in substance that he was not aware of the current administrator for the Division, Amber Howell, approving any salary adjustments for any employee who supervised another employee who earned a higher salary than the employee's supervisor. In response to questioning, Mr. Morrow further stated in substance that Administrator Howell, as far as he knew, had complied with the Emergency Memo.

Ms. Gonzalez testified that DHRM had no authority to make an agency submit an equity pay request to adjust an employee's salary, and that it was discretionary for the agencies to make such a request. She further testified that after DHRM received an equity pay request on the basis of supervision, it would go through different levels of review prior to its approval, with Ms. Gonzalez being the first level of approval, and the final level being the Governor's Office. She testified in substance that DHRM did not review how granting an equity pay increase request would impact other employees within the particular department or division which had submitted the request. Ms. Gonzalez, upon questioning by Mr. Squillante, indicated that she could not remember specifically if the appointing authority for the Division had submitted any equity pay adjustment requests. Ms. Gonzalez also stated that employees were not allowed to directly submit equity pay adjustment requests to DHRM because the NPD-4 had to have the appointing authority's signature of approval. Upon questioning by Mr. Rassier, Ms. Gonzalez stated that DHRM does not review the impact on any other employees when someone is hired at an adjusted step and an accelerated pay request is submitted to it, and DHRM does not advise the requesting agency to adjust the salary of impacted employees if the request creates an inequity.

Deputy Administrator Kluever testified that she had been the Deputy Administrator of the Division since March of 2010. Deputy Administrator Kluever stated in substance that under prudent fiscal procedures, the Division would follow instructions that the Governor's Office, the Budget Office and the Department of Personnel (now DHRM), had set forth in a memo. Deputy Administrator Kluever further testified in substance that accelerated pay requests made prior to the 2010 Emergency Memo were honored on a case-by-case basis. Deputy Administrator Kluever noted in substance that after the Emergency Memo was issued the Division had employees at all levels who were no longer receiving longevity pay, merit salary increases or any pay raises, which had been difficult on everyone, but that the budget climate and the Emergency Memo had to be honored. Deputy Administrator Kluever noted in substance that the Emergency Memo had not been rescinded, and that since its issuance, the Division had not been in the practice of honoring accelerated pay rate increases, specifically for a supervisor making less money than a subordinate which he or she supervised. Deputy Administrator Kluever testified in substance that for other accelerated rate requests, the Division followed statute, and that such requests were made on a case-by-case basis and depended on factors such as a difficult recruitment, because the Division was mandated to provide services to children and could not create a waiting list. In response to

questioning, Deputy Administrator Kluever stated in substance that she would look at, if considering a request for an accelerated pay rate for a new hire, existing employees in the program, the facility, and the area in which the new hire would be working, in order to ensure that granting a request for accelerated pay for a new hire was equity to existing employees. Deputy Administrator Kluever stated that the Division had been consistent in making sure that no new employees were brought in at a higher rate than an employee who was currently in the same location as the new hire who had the same amount of experience, education and the other factors outlined in NAC 284.204.

Mr. Rassier argued that he had looked at psychiatric nurse positions within the Division, and that every psychiatric nurse position that was recently hired was hired at a step six or seven, which was a rate above the six current psychiatric nurses in the Las Vegas region. Mr. Squillante stated he disagreed with Mr. Rassier's statement. In response to a question by Co-Vice-Chair Canter, Mr. Rassier indicated that he was looking at the psychiatric nurses' longevity with the State, and that he did not have any information on the nurses' education and background. It was indicated by Co-Vice-Chair Canter that the nurses' education and background may be the reason why the new nurses were in fact hired at different rates than the existing psychiatric nurses.

In response to questioning by Mr. Rassier about Mr. Handwerker's job acceptance being conditioned upon him being rehired at an adjusted step 10, Deputy Administrator Kluever stated that many staff members had worked for the Division in the past, left the Division for better pay, and then decided to return to the Division—Mr. Handwerker was one of those individuals. Deputy Administrator Kluever stated she did not believe Mr. Handwerker's pay was addressed as an accelerated rate; rather, it was a lateral move back into the Division with comparable pay. Deputy Administrator Kluever noted that the name of the ASO from NYTC Mr. Rassier had referred to was named Sean Clark and not Sean Young.

The Committee considered the evidence and arguments of counsel, and the parties; and deliberated on the record. Committee Member Allison Wall stated that after reading the documents in the packets and hearing both sides present their cases she thought that the agency had been consistent in its approach to equity pay requests, and that the Division had the authority not to entertain requests for equity pay adjustments. Committee Member Claudia Stieber acknowledged that the situation was problematic and frustrating, but that she did not see where the agency had violated any NAC or NRS or acted outside of its discretionary authority. Co-Vice-Chair Canter stated in substance that she agreed, and that the agency had the discretion to accept or deny the request for equity pay adjustments, and that unfortunately, concerning the people Mr. Rassier had cited, the Committee did not know what kind of criteria their accelerated rate was based upon. Co-Vice-Chair Canter gave an example that in Mr. Handwerker's case, if he were promoted at the University of Nevada Las Vegas at a higher step and a higher grade, and he then lateraled back to DHHS, he would keep his higher grade and higher step. Co-Vice-Chair Canter further stated that the agency should be commended for working with Mr. Rassier and meeting with him in trying to resolve the grievance.

Co-Vice-Chair Canter requested a motion.

MOTION: Moved to deny the grievance on the basis that the grievant had not proved that the Division had violated any statute, regulation, or acted outside of its area of discretion.

BY: Committee Member Claudia Stieber

SECOND: Committee Member Donya Deleon

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

6. Public Comment

There were no comments from the audience or Committee members.

7. Adjournment

MOTION: Moved to adjourn.

BY: Committee Member Allison Wall

SECOND: Committee Member Claudia Stieber

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