



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
March 22, 2018

Held at the Nevada Department of Transportation, HQ Carson City, 1263 S. Stewart St., Room 302, Carson City, Nevada, and the Nevada Department of Transportation, District 1, 123 E. Washington Ave., Building A Conference Room, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler–Chair	X
Ms. Pauline Beigel	
Mr. Guy Puglisi	
Ms. Sandie Ruybalid	
Mr. Ron Schreckengost	X
Ms. Jennifer Bauer	X
Employee Representatives	
Mr. Tracy DuPree	X
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Kara Morris, EMC Hearing Clerk

1. Call to Order

Chair Hagler called the meeting to order at approximately 11:00 am.

2. Public Comment

There were no comments from the audience or Committee Members.

Chair Hagler opened the meeting with Committee introductions.

3. Adoption of the Agenda – Action Item

Chair Hagler requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.

BY: Member Tracy DuPree

SECOND: Member Sherri Thompson

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

4. Discussion and possible action related to Grievance #5501 of Charles Jackson, Department of Taxation – Action Item

Chair Hagler opened the Committee for discussion.

Member DuPree stated as much as feels the pain of the grievant, he could not get beyond NAC 284.458 that states those on probation have no grievant rights.

Member DuPree stated while it is horrible to get dumped at 11 months, there is nothing the EMC can do.

Chair Hagler asked if Member DuPree was specifically citing subsection 2, Member DuPree stated yes.

Chair Hagler asked if there were any comments from the other members.

Member Schreckengost stated he agreed with Member DuPree.

Member Thompson and Member Russell had nothing further to add.

Member Bauer stated she would clarify Member DuPree's comments.

Member Bauer stated she agreed, and NAC 284.458(2) provides that an employee who is serving a trial period may not use the grievance procedure set forth in the regulations.

Chair Hagler stated this would also be applicable with NAC 284.695 as it does not fall within EMC jurisdiction.

Chair Hagler stated she would entertain a motion.

Member DuPree moved to deny a hearing for grievance #5501 based on NAC 284.458(2), and the grievance is not within the jurisdiction of the EMC.

Member Schreckengost seconded.

Chair Hagler asked if there was any other discussion from the Committee, there was none.

MOTION: Moved to deny a hearing for grievance #5501 based on NAC 284.458(2), and lack of jurisdiction.

BY: Member Tracy DuPree

SECOND: Member Ron Schreckengost

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

5. Discussion and possible action related to Grievance #5426 of Taylor Pappas, Department of Public Safety – Action Item

Chair Hagler opened the Committee for discussion.

Member DuPree stated the Committee has had these grievances before, and as much as it bothered him someone would tell an applicant they are the most qualified candidate, and then proceed not to hire them, the grievant is claiming this may be because of an Americans with Disabilities Act (ADA) issue.

Member DuPree stated that because ADA is a Federal law, it is not under the purview of the EMC.

Member DuPree stated the grievant was afforded the opportunity to interview, and as long as one is afforded the opportunity to interview along with other candidates, that is all the ADA requires.

Member DuPree stated this grievance is not under the jurisdiction of the EMC.

Member Thompson stated she agreed with Member DuPree.

Member Thompson stated there may be another venue the grievant would want to take this issue to.

Member Thompson stated she was unsure of what the grievant wanted the Committee to do.

Chair Hagler stated the proposed resolution was to allow the grievant to choose the supervisor she wanted, and then to receive an upgrade.

Chair Hagler stated the Committee could not do that.

Chair Hagler stated she was ‘on the fence’ while going through the packet, on whether the Committee should hear the grievance.

Chair Hagler stated while the grievant stated she was discriminated against by her disabilities not being taken into consideration, Chair Hagler’s concern was if everyone being interviewed had been asked the same questions.

Chair Hagler stated the timeframe of being notified on Monday instead of Friday did not make a difference.

Chair Hagler stated in the response from the employer, when they went through the resolution conference, was that all the interviewees were asked the same questions, and all of that was reviewed at the resolution conference.

Chair Hagler stated that is usually what the Committee would look at; if the panel did not ask all the interviewees the same questions.

Chair Hagler stated there was nothing she could find that says 'you *must*' select the most qualified, it is something that must be considered.

Chair Hagler stated all candidates must have the minimum qualifications' to be able to interview.

Member Bauer stated she felt the grievant was 'throwing the kitchen sink' at this, as it appeared the grievant did not get a promotion she felt confidently she was entitled to.

Member Bauer stated she felt the grievant was throwing discrimination and ADA at the issue, and throwing some timeliness at the issue, and did not feel those were relevant.

Member Bauer stated her only concern would be the Committee's authority to act on whether the interview process was followed in compliance with rule and regulation.

Member Bauer stated according to the efforts by the employer to meet with the employee, it appears, preliminarily without a hearing, that was complied with.

Member Bauer stated if the grievance was to move to hearing, that would be the only issue the Committee could act upon.

Chair Hagler stated reading the responses back from the employer, and looking at the response from the grievant, the grievant stated several times that her disability was not taken into consideration.

Chair Hagler stated even the employer said they followed the policy, all candidates were asked the same questions, and that has not been in question.

Chair Hagler stated the disabilities were taken into consideration, in agreement with Member DuPree, that the grievant was granted an interview.

Chair Hagler stated aside from that, the grievant stating they are the most qualified and that is the reason she should get the position, may not be a grievable action.

Chair Hagler stated she would probably move the grievance forward if she did not feel confident the issue was the interview process was not followed

correctly, but that was not the crux of the grievance.

Chair Hagler stated the crux of the grievance is disabilities were not taken into consideration, and the grievant is the most qualified and should have received the position.

Chair Hagler stated since the grievant did not receive the position, the resolution is the grievant wanting to be placed under Jerrod Williams only, and to be upgraded in position.

Chair Hagler stated she thought the employer was trying to accommodate the resolution and tried to find an open position in the Department of Public Safety (DPS), but there was no open position available.

Chair Hagler stated she felt the employer tried to resolve the issue as best as they could, but the employer also stated you could not pick who your supervisor is, or the position you want.

Chair Hagler asked if there was further discussion from the Committee.

Member Thompson stated she had no comments.

Member Russell stated she agreed with everything that had been stated.

Chair Hagler asked if anyone was ready to entertain a motion.

Member DuPree moved to deny the grievance since the Committee did not have a way to resolve the issue, and if there was an issue, it is not under the purview of the EMC, it is under the ADA.

Chair Hagler stated that instead of stating the EMC will “deny the grievance”, the correct phrasing would be “to answer the grievance without a hearing”.

Chair Hagler asked if there was any discussion on the motion to answer the grievance without a hearing, as the Committee does not have a way to resolve the grievance and it does not fall within the Committees’ jurisdiction.

Mr. Whitney stated he agreed with the comments and it did seem like the grievant was throwing a lot of things out there, and there was not enough information to discuss what the grievant was grieving.

Mr. Whitney stated Member DuPree started with a good motion but would like Member DuPree to add the Committee has no way to resolve the issue, as it is an issue under the Americans with Disabilities Act pursuant to NAC 284.695, the Committee would not have jurisdiction.

Member DuPree moved to amend his motion.

Member DuPree moved the Committee not move the grievance forward based on NAC 284.695, the Committee does not have jurisdiction and

cannot remedy the issue.

Member Schreckengost seconded the motion.

Member Russell asked if the Committee needed to address the DPS policy violations.

Member Russell asked if the Committees motion and response need to address the DPS policy violations listed by policy number in the grievance.

Chair Hagler stated if the grievance does not fall under the Committee jurisdiction, the Committee does not need to address the NAC's or NRS's the grievant says have been violated.

Mr. Whitney stated there have been times when the Committee has looked at issues that may not fall under the Committee's jurisdiction, but in this case, the Committee does not have enough information on the policies that may have been violated.

Mr. Whitney stated there were three policies referenced: Policy 1003, Policy 340.3 and Policy 316.

Mr. Whitney stated that Policy 340.3 was not mentioned in the grievance.

Mr. Whitney stated that Policy 316 was mentioned but not by the grievant.

Mr. Whitney stated that left Policy 1003, but there was no copy of the policy for the Committee to reference.

Mr. Whitney stated from reading the grievance, Policy 1003 seemed like a promotion and transfer policy, but it would be difficult for the Committee to determine if the policy was followed.

Chair Hagler stated the grievant stated Policy 1003 mandated you *must* select the most qualified candidate.

Chair Hagler stated the policy says you must *consider* the most qualified candidate.

Chair Hagler stated that after the back and forth with the agency, the only thing the grievant is still contesting is DPS Policy 1003.1.1, that the grievant states says you *must* select the most qualified candidate.

Chair Hagler stated this opens the Committee for discussion on if the Committee feels confident the agency's policies were not violated in the interview process.

Member Schreckengost stated the panel that interviewed the grievant and made a decision, it was not left to the Director, it was not left to the Chief, it was left up to the panel.

Member Schreckengost stated the panel decided and arguably selected the

most qualified candidate.

Member Schreckengost stated while the grievant disagreed with that decision, the panel selected someone other than the grievant.

Member Shreckengost asked rhetorically, “what are we going to do, get everybody in here and argue they picked the person they thought was the most qualified?”

Member Shreckengost stated we would have 4, 5, 6 people saying one thing, and the grievant would say something else.

Member Shreckengost stated this was trumped by the fact the Committee has already determined lack of jurisdiction and there is a motion on the table that has been seconded, so what would the Committee accomplish by looking at this policy.

Chair Hagler stated she wanted to make sure the Committee was comfortable answering the grievance without a hearing.

Chair Hagler stated the agency did a very good job in answering at every step, that the agency offered long answers addressing every concern, meeting with the grievant and reviewing everything the grievant wanted.

Chair Hagler stated it was alluded to when the agency told the grievant she was not selected, it was because the grievant did not thoroughly answer the interview questions.

Chair Hagler stated when she has interviewed candidates, if they are within that agency, it is assumed the person they are interviewing knows their knowledge, but if the candidate doesn't expand on their questions, not everyone on the panel has the benefit of knowing the candidate and what they are capable of.

Chair Hagler stated the issue is, does the grievance fall within the Committee jurisdiction because most of what the grievant is claiming falls under the Americans with Disabilities Act, and is the Committee comfortable that the agency did not violate their interviewing processes under the DPS policies that were listed.

Member Shreckengost stated he was confident the agency did not violate its interview processes and the Committee could move forward with the motion.

Member Russell stated she was concerned that the Committee did not have enough information relating to the DPS policy specifics to not move forward with a hearing.

Member Russell stated if the Committee did move forward with a hearing, it would need to be restricted to just the DPS policies and what violations are being specifically alleged.

Chair Hagler stated there was a motion from Member DuPree to answer the grievance without a hearing as it does not fall within the jurisdiction of the EMC, based on NAC 284.695 and the grievance falls under the ADA.

Chair Hagler stated there was a second from Member Shreckengost and asked for a vote.

The vote was 5 to 1 with Member Russell voting against.

MOTION: Moved to answer grievance #5426 without a hearing based on NAC 284.695, lack of jurisdiction and the grievance falling under the Americans with Disabilities Act.

BY: Member Tracy DuPree

SECOND: Member Ron Schreckengost

VOTE: The vote was 5 to 1 with Member Russell voting against.

6. Public Comment

There were no comments from the audience or Committee Members.

7. Adjournment

Chair Hagler adjourned the meeting at approximately 11:29 am.