

Brian Sandoval
Governor

Mandy Hagler
Chair



Stephanie Canter
Co-Vice-Chair

Allison Wall
Co-Vice-Chair

Greg Ott
Deputy Attorney General

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STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
June 16, 2016

Held at the Nevada State Library and Archives, 100 N. Stewart St., Conference Room C, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1100, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler-Chair	X
Mr. Guy Puglisi	
Ms. Claudia Stieber	
Ms. Allison Wall-Co-Vice-Chair	X
Ms. Michelle Weyland	
Ms. Pauline Beigel	

Employee Representatives	
Ms. Stephanie Canter-Co-Vice-Chair	X
Ms. Donya Deleon	
Mr. Tracy DuPree	
Mr. David Flickinger	
Ms. Turessa Russell	X
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 Stephanie Canter:** Called the meeting to order at approximately 9:30 a.m.

2. Public Comment

There were no comments from the audience. Co-Vice-Chair Allison Wall disclosed she had formerly worked at the Department of Motor Vehicles, had no knowledge of the issues or grievants pertaining to agenda items 8 and 9, and believed she could participate objectively. Co-Vice-Chair Canter was in agreement.

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 Turessa Russell
SECOND: Co-Vice-Chair Allison Wall
VOTE: The vote was unanimous in favor of the motion.

4. Approval of Minutes for April 21, 2016 – Action Item

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

MOTION: Moved to approve the minutes.
BY: Co-Vice-Chair Wall
SECOND: Committee Member Russell
VOTE: The vote was unanimous in favor of the motion.

5. Adjustment of Grievance of Wayne Prosser, #4018, Department of Public Safety – Action Item

Co-Vice-Chair Canter opened the hearing on the adjustment of Grievance #4018. Department of Public Safety (“DPS”), Nevada Highway Patrol (“NHP”) Sergeant Wayne Prosser (“Sergeant Prosser”) was present and represented by Michael King (“Mr. King”). DPS was represented by Deputy Attorney General Michelle Di Silvestro Alanis. Sergeant Prosser, NHP Lieutenant Charles Haycox (“Lieutenant Haycox”), DPS Sergeant Scot Martin (“Sergeant Martin”) and former NHP Major Joseph Patrick Gallagher (“Mr. Gallagher”) were sworn in and testified at the hearing. Both parties submitted exhibits, and there were no objections to the exhibits.

Mr. King argued in substance that Sergeant Prosser’s actions on May 2, 2015, were not deserving of a written reprimand, and that the reprimand should be overturned. Mr. King explained May 2, 2015, was the weekend of the Mayweather and Pacquiao fight in Las Vegas, and this fight required a unified command post involving NHP and the Las Vegas Metropolitan Police Department. Mr. King in substance stated that Lieutenant David Miller (“Lieutenant Miller”) was the highest ranking NHP officer on duty at the unified command post the night of May 2, 2015. On that night, Lieutenant Miller contacted Sergeant Prosser and requested his assistance with organizing a team of troopers for a dignitary escort that was to be arranged on short notice. Sergeant Prosser had already volunteered for another overtime assignment

involving a driving under the influence (“DUI”) enforcement funded by a federal grant.

Mr. King in substance stated Sergeant Prosser assembled the team of troopers, which included another NHP sergeant, Sergeant Scott Scrivner (“Sergeant Scrivner”). Mr. King also stated in substance that it was Sergeant Prosser’s belief that another sergeant, Sergeant Diamond, had signed up for and would be working the DUI grant-funded assignment and that Sergeant Diamond could therefore fulfill the duty of supervisor. Mr. King stated in substance that Sergeant Prosser monitored his radio during the time he was participating in the dignitary escort and that at no time was Sergeant Prosser unavailable to perform his supervisory duties in connection with the DUI enforcement. Additionally, Mr. King stated that once Sergeant Prosser was finished with the escort he reported back to the DUI enforcement assignment. It was also stated by Mr. King that Sergeant Scrivner was also charged with the same charges which Sergeant Prosser was charged with, but that the charges against Sergeant Scrivner were determined to be unfounded.

DPS argued in substance that Sergeant Prosser failed in his supervisory duties the night of May 2, 2015, by failing to report to the DUI grant-funded assignment, and instead participated in an unauthorized dignitary escort. Additionally, DPS further argued in substance that Sergeant Prosser convinced two other NHP troopers who were going to participate in the DUI assignment to not participate in that assignment, and to instead go with him to the dignitary escort. DPS noted in substance that Sergeant Prosser did not notify anyone connected with the DUI assignment that he was not going to attend that assignment, or that he was taking two NHP troopers away from the DUI assignment. DPS also noted in substance that Sergeant Prosser’s actions made the DUI grant-funded assignment less effective than it should have been without his and the two other NHP troopers’ participation in the assignment.

DPS argued in substance NAC 284.638(3) provided for warnings to be given to State employees under certain circumstances, and also for written reprimands to be given when an oral warning failed to cause a correction of an undesired action or when a more severe initial action was warranted by the conduct of the State employee in question. In the present case, DPS stated the appointing authority deemed Sergeant Prosser’s conduct severe enough that it warranted a written reprimand.

DPS added that Mr. Gallagher verified in substance in the written reprimand that there was substantial evidence to support a finding that Sergeant Prosser failed to fulfill his supervisory duties on May 2, 2015, and that the written reprimand was reasonable and within the NHP guidelines of discipline.

Sergeant Prosser testified in substance that he had been a sergeant with NHP since July 1, 2009, and that he supervised seven NHP troopers. On the night of May 2, 2015, Sergeant Prosser testified that he had volunteered to be on a federally-funded DUI assignment. Sergeant Prosser stated in substance that on that night he received a call from Lieutenant Miller asking him for assistance in performing an escort for dignitaries on short notice. Sergeant Prosser indicated

that he pulled two troopers from the DUI enforcement assignment for the escort. Sergeant Prosser testified that he did not believe he discussed with Lieutenant Miller whether or not the dignitary escort was authorized under NHP policies, and that he did not ask if the dignitary escort was a contracted one, and did not get a contract number.

Sergeant Prosser testified in substance he did not notify Lieutenant Haycox the night of May 2, 2015, that neither he nor two other troopers would not be participating in the DUI assignment, although Lieutenant Miller, the highest ranking officer assigned to the unified command post, was aware of his actions. Sergeant Prosser indicated in substance that it was not common practice to notify Lieutenant Haycox if the number of people working on a grant-funded assignment taking place on a weekend was being reduced during the assignment itself, since Lieutenant Haycox was not on duty on the weekends. Sergeant Prosser stated in substance that he did not feel it was his place to ask if Lieutenant Miller had the proper paperwork in place for the dignitary escort, and that he had not heard of it being a common practice for a subordinate to ensure lieutenants had the necessary contracts and paperwork in place before going on an assignment. Sergeant Prosser indicated in substance that the call from Lieutenant Miller was at the last minute, and that there was not really time to talk about coding and contract numbers.

Sergeant Prosser stated in substance that he had a higher degree of responsibility as a NHP sergeant than a NHP trooper would have. Sergeant Prosser also stated in substance that while he was participating in the dignitary escort he could have left it at any time if necessary because there was another NHP sergeant participating in the escort.

Sergeant Prosser testified in substance that when a trooper participated in a grant- funded DUI assignment they were required to code on their timesheet that the trooper worked that particular assignment, and a trooper would code his or her timesheet in a certain way to indicate if the trooper had participated in a dignitary escort. In response to questioning, Sergeant Prosser testified in substance that, although he had never failed to appear at a DUI grant-funded assignment he had signed up for due to an illness, he would tell someone who was on the assignment with him if he could not appear due to an illness. Sergeant Prosser also indicated in substance that there was nothing specific in writing at NHP dealing with not appearing for a DUI grant-funded assignment.

Lieutenant Haycox testified he had been a lieutenant with NHP for five and a half years, and that he had been a lieutenant in the administrative section of NHP for 18 months. Lieutenant Haycox testified he was in charge of federally-funded programs at NHP and that he coordinated when grant-funded assignments took place, although he was not in charge of scheduling who participated in the grant-funded assignments.

Lieutenant Haycox also testified in substance that the purpose of the grant-funded DUI assignments was to apprehend and arrest impaired drivers and reduce the fatality rate on the roadways. Additionally, Lieutenant Haycox stated in substance that one of the goals of the assignment was to increase the number

of officers available to target impaired drivers, and not to service other assignments. Lieutenant Haycox stated in substance that NHP tried to have a sergeant assigned to work on the DUI grant-funded assignments, since other sergeants at NHP were already handling their assigned duties, and that to the best of his knowledge Sergeant Prosser was the only sergeant assigned to the May 2, 2015, DUI enforcement assignment. Lieutenant Haycox noted in substance, though, that the DUI enforcement assignment would not have been cancelled if no sergeants had volunteered for the assignment, and that the senior trooper would have been in charge of the assignment, and if that person needed a supervisor he or she could have contacted a lieutenant or sergeant on duty.

Lieutenant Haycox stated in substance that grant-funded assignments were important to NHP. Lieutenant Haycox also stated in substance that three fewer officers on the DUI enforcement assignment would have resulted in less than effective DUI enforcement for that assignment. Lieutenant Haycox testified in substance that it was not out of the ordinary or unacceptable to pull officers off of their assigned events, such as the DUI grant-funded assignment, but that communication needed to have occurred both ways in the present case.

Sergeant Martin testified that he was with the DPS Office of Professional Responsibility (“OPR”), which was the internal affairs division at DPS. Sergeant Martin testified in substance that he conducted an investigation into the May 2, 2015, matter and interviewed various witnesses in connection with the investigation. Sergeant Martin testified in substance that he never interviewed Sergeant Diamond as part of his investigation, and that he had asked Sergeant Diamond if he had worked the DUI grant- funded assignment on May 2, 2015; Sergeant Diamond said he had not.

Mr. Gallagher testified that prior to retiring in May 2016 he had been with NHP for 26 years, that his last rank with NHP was major, and that he had been the appointing authority with respect to discipline at NHP. Mr. Gallagher testified in substance that the grant funding received by NHP was an important source of funding to NHP which any abuse of could jeopardize. Mr. Gallagher stated in substance that he became aware of the events of May 2, 2015, on May 9, 2015, when Lieutenant Miller called him to explain that during the Mayweather and Pacquiao fight he had authorized an escort of dignitaries, and later became concerned about this activity and was simply letting Mr. Gallagher know before he heard about it through another channel.

Mr. Gallagher testified in substance that in the past NHP had provided escorts for elected officials and heads of state, and that the escort of the individuals the night of May 2, 2015, was not properly authorized. Mr. Gallagher also testified in substance that he was concerned how the funding of the May 2, 2015, dignitary escort would be allocated, and told Lieutenant Miller to make sure the escort was not charged to the DUI grant money, and to make sure the time sheets of the personnel involved were coded correctly.

Mr. Gallagher stated in substance that Sergeant Prosser did not use his best judgment and was negligent in his duties as a supervisor. Mr. Gallagher stated in substance that the fiscal impact resulting from the May 2, 2015, dignitary

escort played a small role in the discipline of Sergeant Prosser, and that other factors involved in issuing the written reprimand were the fact that the dignitary escort was unauthorized, and Sergeant Prosser organized a group of troopers who then called off of their DUI grant assignment to work the dignitary escort, thus reducing the numbers of troopers available. Mr. Gallagher noted in substance that as a DPS Class 1 Offense, the discipline which Sergeant Prosser could have received ranged from a verbal warning to a written reprimand. Mr. Gallagher stated in substance that the issuance of a written reprimand was nothing personal against Sergeant Prosser and called the actions of May 2, 2015, a “comedy of errors.” Mr. Gallagher testified in substance that he came to the conclusion a written reprimand should be issued based on the totality of the circumstances, in addition to the fact that he wanted to help ensure that such actions did not occur again. Mr. Gallagher added that the proposed discipline of a written reprimand was vetted to the level of NHP colonel.

Mr. Gallagher further stated in substance that, as a sergeant, Sergeant Prosser had the obligation to ask the correct questions, such as whether NHP had ever done such dignitary escorts before, and whether there was a contract number associated with the escort. Mr. Gallagher added that if such a discussion and collaboration had taken place between Sergeant Prosser and Lieutenant Miller concerning the dignitary escort, a different decision on the matter probably would have been made. Additionally, Mr. Gallagher testified in substance that although it was not mandatory that a sergeant be part of the DUI grant-funded assignment it was preferable to have a sergeant, rather than a senior trooper, in charge of such assignments so the sergeant could assist the troopers with various issues.

The Committee discussed and deliberated on Sergeant Prosser’s grievance. Co-Vice-Chair Wall stated in substance there had been an OPR investigation which had sustained one allegation against Sergeant Prosser, and DPS’ policies gave DPS the discretion to issue a written reprimand under the circumstances; therefore, the written reprimand did not seem unreasonable. Chair Mandy Hagler added in substance that although apparently it was not uncommon for troopers to be called off of DUI assignments, the difference in the present case was that Sergeant Prosser was not called off of the DUI assignment due to an accident or emergency, and that there was the expectation when he signed up for the DUI assignment that he would follow through and be a sergeant on the DUI assignment that night, and instead he went to a different assignment. As a result, Chair Hagler stated she agreed that Sergeant Prosser had failed to fulfill his supervisory duties for the DUI assignment on the night in question.

Committee Member Tuessa Russell stated that she agreed the agency had the expectation when Sergeant Prosser signed up for the DUI assignment that he would appear for that assignment, to go to the dignitary escort instead was poor judgment on his part, and that Sergeant Prosser should have asked more questions when asked to perform the dignitary escort.

MOTION: Moved to deny the grievance because it was within DPS’ authority to issue written reprimands within the parameters of NAC 284.638(3).

BY: Co-Vice-Chair Canter
SECOND: Chair Hagler
VOTE: The motion passed unanimously.

6. Discussion related to Grievance #4183 of Lanita Anderson, Department of Public Safety – Action Item

Chair Hagler opened the discussion on Grievance #4183. Chair Hagler stated in substance the Committee may answer the request for consideration of a grievance without a hearing if the grievance is based upon the Committee's previous decisions or does not fall within its jurisdiction.

Co-Vice-Chair Wall stated in substance the grievant asked the Committee to change the Nevada Revised Statutes ("NRS"), which is not in the authority of the Committee. Chair Hagler stated in substance there was no indication DPS violated NRS. Co-Vice-Chair Canter stated in substance the grievant alleged DPS did not follow NRS, and was told during the hiring process only interviews were considered. Chair Hagler noted in substance agencies consider other factors. Co-Vice-Chair Wall added in substance there is more to the selection process that happened prior to a candidate being interviewed.

MOTION: Moved to answer the request for consideration of Grievance #4183 without a hearing based on prior EMC decisions.

BY: Co-Vice-Chair Canter
SECOND: Co-Vice-Chair Wall
VOTE: The vote was unanimous in favor of the motion.

7. Discussion related to Grievances #4345 of Desiree Drakeley & Patricia Fraser #4351, Department of Motor Vehicles – Action Item

Chair Hagler opened the hearing on Grievances #4345 and #4351. The grievances were submitted separately and were related to the shift change at the Department of Motor Vehicles implemented in August 2015. As the factual basis of the grievances was substantially similar, Chair Hagler determined the grievances would be discussed together.

Chair Hagler stated in substance the Committee did not have the authority to make an agency change an employee's work schedule. Co-Vice-Chair Canter stated in substance the grievants believed the shift bidding process to be unfair, which resulted in a change to schedules. Co-Vice-Chair Wall noted in substance the grievants were grieving the number of available shifts, 10 down from 20. She continued the Committee had heard similar grievances and had no authority to force an agency to implement a certain shift.

MOTION: Moved to answer the requests for consideration of Grievances #4345 & 4351 without a hearing based on prior EMC decisions regarding department scheduling needs.

BY: Co-Vice-Chair Canter
SECOND: Co-Vice-Chair Wall
VOTE: The vote was unanimous in favor of the motion.

8. Public Comment

There were no comments from the audience or from the Committee Members.

9. Adjournment

Chair Hagler stated if there were no objections the meeting would be adjourned. Hearing none, the meeting was adjourned.