



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
July 17, 2014

Held at the Grant Sawyer Building, 555 E. Washington Ave., Room 1100, Las Vegas, Nevada, and the Blasdel Building, 209 E. Musser Street, Room 105, Carson City, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	
Ms. Mandy Payette–Co-Vice-Chair	X
Ms. Bonnie Long	
Ms. Claudia Stieber	
Ms. Allison Wall	
Ms. Michelle Weyland	X
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 9:00 a.m.

2. Public Comment

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

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

4. Discussion and possible action related to motion to dismiss of Grievance of Molly Schroeder, submitted by the Department of Corrections, supporting documentation, and related oral argument – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC” or “Committee”) by the agency employer Department of Corrections (“NDOC”) which was represented by Deputy Attorney General Charles Mackey. Molly Schroeder was not present.

Deputy Attorney General Mackey argued that the EMC did not have jurisdiction to hear Ms. Schroeder’s grievance because it was challenging the non-certification of a position, and that the proposed remedy was to appeal the non-certification decision to the Division of Human Resources Management pursuant to NRS 284.245 and NAC 284.341. Deputy Attorney General Mackey further argued that if the issue was not resolved at that level, an appeal to the Personnel Commission was the appropriate course of action.

Additionally, Deputy Attorney General Mackey argued that NRS 284.384 specifically excluded from the EMC’s jurisdiction challenges to a decision not to certify an employee. He argued that Ms. Schroeder’s proposed resolution, to broaden the qualifications for the Correctional Casework Specialist Trainee position so that she could be considered for that position, was not within the EMC’s jurisdiction.

The Committee reviewed the documents submitted, considered the arguments presented and deliberated on the record. The Committee found that they did not have jurisdiction to hear Ms. Schroeder’s grievance.

Co-Vice-Chair Canter requested a motion.

MOTION: Moved to grant the motion to dismiss.
BY: Committee Member Michelle Weyland
SECOND: Committee Member Turessa Russell
VOTE: The vote was unanimous in favor of the motion.

5. Discussion and possible action related to motion to dismiss of Grievance of Matthew Moonin, submitted by the Department of Public Safety, supporting documentation, and related oral argument – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee by the agency employer Department of Public Safety (“DPS”) which was represented by Deputy Attorney General Cynthia Hoover. Trooper Matthew Moonin was represented by Ken McKenna.

DPS argued in its Motion to Dismiss that Trooper Moonin had withdrawn two parts of his grievance, one of which concerned reassignment to the Las Vegas urban area, and the other a demand for a letter of apology from Sergeant Thomas Higgins (“Sergeant Higgins”). Additionally, DPS argued that the Committee did not have the jurisdiction to consider the remaining issues of Trooper Moonin’s grievance. Deputy Attorney General Hoover argued that Trooper Moonin was asking that a letter of Instruction (“LOI”) which had been issued to him be removed from his file, that he be given proof that Lieutenant Dawn Altenhofen (“Lieutenant Altenhofen”) and Sergeant Higgins had completed mandatory supervisor training and that he be given written assurance from DPS that he would not suffer retaliation in the future from Sergeant Higgins. DPS argued that LOIs are not discipline but are a form of instruction, and so the Committee had no jurisdiction over them, and moreover, that the LOI in this matter had been rewritten and shortened after Trooper Moonin grieved it, so removing the LOI at the present time was a moot point.

Additionally, DPS argued that Trooper Moonin has received verbal assurances from the DPS Deputy Director that Lieutenant Altenhofen and Sergeant Higgins had taken the required mandatory supervisory training, but that Trooper Moonin was still unsatisfied. DPS also argued in substance that Trooper Moonin’s request to look at personnel records in connection with this part of his grievance was prohibited by law, and therefore the Committee could not grant this request. Finally, DPS argued that Trooper Moonin’s request for written assurances that he would not be retaliated against was outside of the EMC’s jurisdiction and that there were other avenues to handle retaliation complaints.

Ken McKenna argued on Trooper Moonin’s behalf that the present situation started in 2014 when Trooper Moonin refused to stop a motor vehicle which Sergeant Higgins wanted him to stop without having probable cause, and that the vehicle was occupied by Hispanic individuals. Trooper Moonin complained about this action, and fourteen days later Sergeant Higgins wrote an LOI that was presented to Trooper Moonin on January 3, 2014, which alleged that Trooper Moonin had serious performance deficiencies, was not doing his job and which Mr. McKenna stated was full of misrepresentations and contradictions. Additionally, Mr. McKenna stated in substance that there were threats of punishment in the LOI, and that the LOI was in reality a letter of discipline.

Mr. McKenna argued that the LOI was rewritten by the Deputy Attorney General almost four months later. Deputy Attorney General Hoover objected to the line of argument as being irrelevant and Co-Vice-Chair Canter sustained the

objection. Mr. McKenna further argued that the LOI was an improper form of discipline and that Trooper Moonin wanted it removed. Mr. McKenna then requested that the Committee allow Trooper Moonin to share his point of view. Co-Vice-Chair Canter allowed Trooper Moonin to make argument on the record, not testimony.

Trooper Moonin stated that prior to the first LOI being issued he had not been contacted by Sergeant Higgins about any alleged deficiencies in performance, and that was also a reason he was asking that the LOI be removed from his file. In rebuttal, Deputy Attorney General Hoover argued that the original LOI had been removed from Trooper Moonin's personnel file and replaced with a two paragraph letter dated April 29, 2014, making that issue moot.

The Committee, after having read and considered all of the documents filed in this matter and having heard oral arguments, deliberated on the issues presented. Co-Vice-Chair Canter noted that originally there had been five issues, but that two issues had either been resolved or withdrawn. Co-Vice-Chair Canter said that the EMC did not have jurisdiction to make an agency give assurances that someone will not be retaliated against, and that there were other avenues to pursue retaliation claims other than through the Committee. Additionally, she stated that it did not have the jurisdiction to make an agency provide assurances that its supervisors took appropriate training. Co-Vice-Chair Canter also noted that the LOI had been rewritten so that it read like an LOI. There was discussion concerning the appropriate date of the LOI, since the first LOI had been written in January 2014 and the second LOI had been written on April 29, 2014, that perhaps the date should be changed to April 3, 2014.

Co-Vice-Chair Mandy Payette agreed with Co-Vice-Chair Canter that the EMC did not have jurisdiction to hear Trooper Moonin's grievance, and felt that DPS made a good faith effort in trying to resolve Trooper Moonin's grievance prior to it being heard by the EMC.

Co-Vice-Chair Canter discussed how she thought the first LOI read more like a written reprimand and perhaps in the future DPS could craft LOIs like the second letter. Co-Vice-Chair Payette agreed, and that in this case the Committee should consider the second LOI. Committee Members Michelle Weyland and Turessa Russell were in agreement. Committee members continued deliberating pertaining to the date of the second LOI.

Deputy Attorney General Hoover indicated that DPS did not have a problem in changing the date of the second LOI.

Co-Vice-Chair Canter requested a motion.

MOTION: Moved to grant the motion to dismiss, pursuant to NAC 284.695(1), based on the fact that Trooper Moonin's issues were either outside the scope of the Committee's jurisdiction or had already been resolved. It was noted that DPS would adjust the issue date of the second and only LOI from April 2014 to January 2014.

BY: Co-Vice-Chair Stephanie Canter
SECOND: Committee Member Turessa Russell
VOTE: Unanimous in favor of the motion.

6. Adjustment of Grievance of James Sackett, Department of Public Safety – Action Item

James Sackett (“Detective Sackett”) was present and was represented by Richard McCann, Nevada Association of Public Safety Officers. The Department of Public Safety, Investigative Division (“DPS”) was represented by Deputy Attorney General Charles Mackey. The exhibits submitted to the EMC prior to the hearing were marked for entry. There were no objections to the exhibits. Chief Patrick Conmay (“Chief Conmay”), Captain Chad Hastings (“Captain Hastings”) and Detective Sackett were sworn in and testified at the hearing.

Detective Sackett is a polygraph examiner and has been with DPS since December 2005. Even though Detective Sackett’s employing agency is the Investigative Division of DPS his office is located in DPS’ Parole and Probation Office in Las Vegas.

Co-Vice-Chair Canter asked for opening arguments. Both Mr. McCann and Deputy Attorney General Mackey stated their arguments were included in the exhibit packets.

Detective Sackett testified that on the morning of December 17, 2013, he was told by Sally Mendoza (“Ms. Mendoza”), an Administrative Assistant with Parole and Probation, that she was changing offices with him. Detective Sackett further testified that although he had discussed a potential move with his supervisor, Sergeant Martin Roberto (“Sergeant Roberto”) numerous times he hadn’t known that the actual decision to move offices had been made. Detective Sackett testified that he went about his business and began breaking down equipment in preparation for the move. Additionally, Detective Sackett testified that after he learned of the move he contacted Sergeant Roberto and told him what Ms. Mendoza said and asked him to please look into the matter. Detective Sackett testified in substance that he had several telephone conversations with Sergeant Roberto throughout that day and the next day. At some point on the afternoon of December 17 Sergeant Roberto told Detective Sackett that the decision to move had been made and that it had been made by the Chief and the Deputy Director of DPS.

Detective Sackett testified in substance that he went back to Sergeant Roberto on December 18 and told him that he was concerned about the ill-conceived move, including the facts that there were civilians in the polygraph area, that conversations associated with people who would be polygraph tested could be offensive and that he was concerned about potential Title VII issues. Detective Sackett indicated that he didn’t think that those factors had been considered. Detective Sackett stated that Sergeant Roberto indicated that he would “run it up the chain again.” Sergeant Roberto called Detective Sackett back and said in substance that Chief Conmay said he did not want to discuss the matter further.

Detective Sackett testified that he came into the office Wednesday morning (December 18), and as he walked in he was approached by Mellissa Dougherty (“Ms. Dougherty”), an Administrative Assistant III with DPS. Ms. Dougherty also seemed concerned by the move, and Detective Sackett testified that they talked about problems associated with the new location. It was determined that the only possible way to prevent the move was to speak with Ms. Mendoza, which Detective Sackett did later that day. Detective Sackett testified in substance that he asked if it was possible for Ms. Mendoza to speak with her supervisor, Captain Sonner, and see if Parole and Probation could reconsider the move because maybe all of the facts related to the move had not been considered.

Detective Sackett further testified that about an hour after that conversation, Ms. Mendoza saw Detective Sackett in the hallway packing and said that she had been talking to Captain Hastings on the 5th floor, who said if Detective Sackett wanted to come up and express his concerns about the move then he could do so. Although hesitant to do so, Detective Sackett testified that he went to speak with Captain Hastings in order to speak with someone who owns the building and ask them if the move could be reconsidered for reasons that may not have been considered. Detective Sackett testified that he spoke with Captain Hastings with Captain Maul present and began to express his concerns with the move. Captain Hastings explained that Parole and Probation needed the two offices back. At some point Captain Maul stated that the decision to move had been made by the Deputy Director and that it was final. Detective Sackett then left the office, went back to his office around 12:00 p.m. and continued packing. Detective Sackett testified that at about 2:30 p.m. he received a telephone call advising him that he was being placed on administrative leave. Detective Sackett testified that he completed the move at about 6:30 p.m. December 18, 2013.

It was testified to by Detective Sackett that the people in his chain of command never stated that he was not to discuss the move with anyone or not be concerned with the merit of the decision to make the move. Detective Sackett testified that he was not insubordinate nor did he disobey an order in this matter.

Mr. McCann asked Detective Sackett if he was still concerned about his office being moved, whereupon Deputy Attorney General Mackey objected due to relevancy. Co-Vice-Chair Canter overruled the objection, and stated with his expertise, Detective Sackett was the only one who knew what effect the move would have on the job he does. Mr. McCann continued, and asked Detective Sackett if DPS stated that he failed to comply with the directive to move offices. Deputy Attorney General Mackey objected since it was not the basis for the written reprimand. Mr. McCann responded that it was represented by DPS in the employer exhibit packet that Detective Sackett failed to comply with the directive to move offices. Again Deputy Attorney General Mackey objected, and stipulated that it wasn’t a basis for the written reprimand. Mr. McCann answered if it is an inaccurate statement, that he would withdraw the question. Once again, Deputy Attorney General Mackey stipulated that it is not the basis for the written reprimand and that the written reprimand speaks for itself.

Detective Sackett testified that Sergeant Roberto told him he would be moving and that Captain Maul said it was a done deal and to make it happen. Detective

Sackett testified that he never failed to comply with that order. Detective Sackett proceeded to clarify and Deputy Attorney General Mackey objected since there was no pending question. Mr. McCann asked Detective Sackett to clarify.

Deputy Attorney General Mackey interrupted, and asked if the Committee was going to stick to the case presentation time period reflected in the scheduling order notice. Co-Vice-Chair Canter clarified that it was an hour, not 30 minutes, per each side, and for Detective Sackett to continue. Deputy Attorney General Mackey clarified for the record that on page four of the notice it says, "There is a one (1) hour maximum time limit for the hearing of each grievance on the agenda. Each side is allowed up to one half (1/2) hour to present his or her matter." Co-Vice-Chair Canter said it was the Committee's understanding that it was always an hour per side and that this was the first time the matter had ever been brought up.

Mr. McCann asked Detective Sackett if he had spent most of his life in a paramilitary environment. Detective Sackett answered in the affirmative. Mr. McCann asked if he knew the difference between willful disobedience and insubordination. Detective Sackett again answered in the affirmative. Mr. McCann asked if Detective Sackett had been insubordinate and disobeyed an order and Detective Sackett answered in the negative.

In response to cross-examination from Deputy Attorney General Mackey, Detective Sackett testified that he had made numerous complaints about noise issues within his division. He also stated that although he knew that his chief had said the decision was final he did not think that this meant he could not discuss the matter or talk to the proprietors of the building about the matter and ask them to reconsider the move. Detective Sackett testified in substance that until about a year and a half ago he frequently went to Parole and Probation with issues and concerns.

Co-Vice-Chair Mandy Payette asked for clarification about the move. Detective Sackett answered that he first approached his supervisor and then his supervisor's command about his concerns. Co-Vice-Chair Payette asked if Detective Sackett requested the move to which he answered in the affirmative, but that he wasn't asked where to move.

Chief Conmay testified that he was involved in the move of Detective Sackett's office. He testified in substance that he was aware prior to December 2013 that there were concerns over noise issues with respect to where polygraph testing was taking place. He testified that he had visited the polygraph suite and was aware of where it was situated, and that he had been advised of Detective Sackett's concern over noise issues. In an effort to seek a solution, Chief Conmay testified in substance that he thought that Detective Sackett needed to be moved to an area where "traffic" and noise might be less. Chief Conmay also stated in substance that he was in communication with Deputy Director Muth about the matter and had asked her for assistance in interacting with Parole and Probation. According to Chief Conmay, Deputy Director Muth indicated that she would work with Parole and Probation to try and identify an area where a move could be made, and that had occurred.

Chief Conmay also testified that he became aware of Detective Sackett's concerns around December 17 through supervisors, and that the concerns seemed to be compounding. Chief Conmay stated that the decision to make the move at that time was his, and that he still felt, after hearing Detective Sackett's concerns, that the move to the end of the building was more desirable than having the polygraph and Detective Sackett remain where they were. He stated that if any of Detective Sackett's concerns became problems they would attempt to address those issues because they were speculative in nature at that time.

Chief Conmay stated that over the course of that day (December 17) and the next day he received a series of reports of increasingly growing concerns originating from Detective Sackett that went from noise to doing sensitive things and people being exposed to things, and that all the concerns were considered when they were brought to his attention, but that he decided to proceed with the move. Chief Conmay directed that he did not want to discuss the move further and for Detective Sackett to just move, and his understanding was that this was communicated to Detective Sackett.

Subsequent to this communication, Chief Conmay received a complaint he believed on December 18. He was then contacted and told there was a meeting between Detective Sackett and some Parole and Probation managers where Detective Sackett again expressed concerns that his division had already considered, and that it now involved subordinate administrative assistants, and that Detective Sackett was trying to influence the decision, and that the complaint was about how Detective Sackett went about doing this.

In response to this complaint, Chief Conmay directed that Detective Sackett be removed from the environment and placed on administrative leave while the investigation of misconduct was taking place. Initially there were thirteen alleged violations against Detective Sackett; after Chief Conmay's review, he felt that only one allegation was sustained, insubordination. Chief Conmay recommended the appropriate course of action, which was a letter of reprimand, and flew to Las Vegas to meet with Detective Sackett and deliver the letter of reprimand in person. Chief Conmay testified that he reviewed the entire investigative report prior to making his decision to issue the reprimand. Chief Conmay concluded that the continued discussion with parties after he had already considered the same concerns, made a decision and communicated that decision to Detective Sackett and then said he did not want to discuss the matter further was willful disregard of his direction and insubordination. In response to questioning, Chief Conmay explained that insubordination was a Class 2 offense, and that the minimum penalty per DPS' policy for a Class 2 offense was a written reprimand.

Additionally, Chief Conmay testified that although Detective Sackett stated that he was invited into Captain Hasting's office he did not consider this a mitigating factor because it had not been so much of an invitation as an engineered meeting by Detective Sackett's design. Chief Conmay also testified in substance that Detective Sackett was given direction through his supervisor that his concerns had been considered and the matter was not going to be discussed further.

Upon cross examination, Chief Conmay testified in substance that Detective Sackett's insubordination was not a failure to move, it was his failure to follow the directive to stop discussing the move. Chief Conmay also testified that a letter of instruction would have been inappropriate in this matter because based on the conduct and the chart of disciplinary sanctions, the appropriate disposition was a letter of reprimand.

After a brief recess, Captain Hastings testified that he worked for DPS and was assigned to Parole and Probation. He testified as to how his conversation with Detective Sackett occurred. Captain Hastings testified in substance that Ms. Mendoza came up and voiced concerns about the move in question, and that those concerns appeared to be what Detective Sackett brought up to her. Captain Hastings told Ms. Mendoza that if the matter came up again to send Detective Sackett up to speak with him if he wanted to. Captain Hastings testified that he was told that the move would take place and "that was that." He believed this information came from his direct supervisor.

After hearing closing arguments from both parties, the EMC discussed and deliberated on the matter. Co-Vice-Chair Payette stated that Detective Sackett expressed his concerns through the appropriate chain of command who eventually said they were done, that the move would take place, and that even in his written grievance Detective Sackett stated after receiving this response from his chain of command that the only thing left was for him to see if Parole and Probation command staff would intercede after he was told by his chief that the chief did not want to discuss the matter further. This was seen as trying to circumvent the move, which was insubordination.

Committee Member Turessa Russell expressed concern because Detective Sackett apparently heard about the office move from someone outside of his chain of command, and that maybe if he had heard of the move from his direct supervisor (Sergeant Roberto) much of what happened could have been avoided. Co-Vice-Chair Canter saw a communication issue/breakdown in the chain of command where it may not have been conveyed to Detective Sackett that his concerns had been taken into account and that they would proceed with the move and see what happened. Additionally, some EMC members stated that they did not hear in the testimony a direct order not to discuss the move or hear that Detective Sackett was specifically ordered not to talk about the move.

Because of this, some EMC members were unsure of whether Detective Sackett's actions rose to the level of insubordination, although maybe a letter of instruction should have been given. Other EMC members stated that Detective Sackett solicited the help of administrative assistants to go to Captain Hastings, and that it did not appear that Detective Sackett's intentions were just to make everyone aware of what might happen with the move.

Co-Vice-Chair Canter requested a motion.

MOTION: Moved to deny the grievance, as the Department of Public Safety had not abused NAC 284.650 or DPS Policy 341.3.1, as based on the testimony, that Detective Sackett was insubordinate when he when he was given a directive that his Chief no longer wanted to discuss the matter, specifically the move in this case, and he stated he would then get Parole and Probation command staff to intercede with that directive.

BY: Co-Vice-Chair Mandy Payette

SECOND: Co-Vice-Chair Stephanie Canter

VOTE: The motion failed due to the lack of a majority vote with Committee Members Turessa Russell and Michelle Weyland voting in opposition. Therefore, the grievance was denied.

7. Public Comment

There were no comments from the audience or Committee Members.

8. Adjournment

Co-Vice-Chair Canter asked for a motion to adjourn.

MOTION: Moved to adjourn.

BY: Committee Member Turessa Russell

SECOND: Co-Vice-Chair Mandy Payette

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