Steve Sisolak
Governor

Guy Puglisi
Chair

Jennifer Bauer
Co-Vice-Chair

Pauline Beigel
Co-Vice-Chair

Tiffany Breinig
Deputy Attorney General

Robert A. Whitney
Deputy Attorney General

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
February 21, 2019

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	
Ms. Pauline Beigel	
Mr. Ron Schreckengost	X
Ms. Jennelle Keith	
Ms. Tonya Laney	

Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	
Ms. Dana Novotny	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 Thompson
SECOND: Member Schreckengost
VOTE: The vote was unanimous in favor of the motion.

5. Approval of Minutes for December 13, 2018 – Action Item

Chair Puglisi asked if there were any minutes the Committee would like pulled for discussion, there were none.

MOTION: Moved to approve the minutes for December 13, 2018
BY: Member Thompson
SECOND: Member Schreckengost
VOTE: The vote was unanimous in favor of the motion.

6. Approval of Minutes for December 20, 2018 – Action Item

MOTION: Moved to approve the minutes for December 20, 2018
BY: Member Thompson
SECOND: Member Schreckengost
VOTE: The vote was unanimous in favor of the motion.

7. Discussion and possible action related to Grievance #5809 and #5837 of Jason Harris, Office of the Attorney General – Action Item

Mr. Harris appeared at the hearing on this date in proper person. Chief Deputy Attorney General, Cameron Vandenberg (Chief DAG Vandenberg), represented the agency/employer, the State of Nevada, Office of the Attorney General (OAG). Mr. Harris' Grievance Nos. 5809 and 5837 were heard simultaneously with Grievance Nos. 5810 and 5836 filed by Alwyn Pindar (Mr. Pindar).

There were no objections to the exhibit packets submitted by the parties. Shaun Bowen (Deputy Chief Bowen), OAG Deputy Chief Investigator, Roland Swanson (Chief Swanson), OAG Chief of Investigations, Mr. Pindar, and Grievant were sworn in and testified on behalf of Grievant. Kara Sullivan (Ms. Sullivan), Division of Human Resource Management

(DHRM) Supervisory Personnel Analyst and Adrian Foster (Mr. Foster), DHRM Personnel Analyst III, were sworn in and testified on behalf of the OAG. Additionally, Jennifer Davies, OAG Deputy Chief Investigator, and Kristina Barrette (Ms. Barrette), OAG Personnel Analyst II, were present and sworn in, but did not provide testimony in the matter.

STATEMENT OF THE CASE

Mr. Harris was formerly employed with the OAG as a Criminal Investigator II. Mr. Harris argued in substance that he filed his grievances because the Nevada Revised Statutes (NRS) were violated and the qualifications posted in the Nevada Employee Action and Timekeeping System (NEATS) for the two open OAG Criminal Investigator Supervisor (Supervisor) positions were not followed. Mr. Harris indicated that he was seeking clarification on the mandatory qualifications listed in the NEATS posting for the Supervisor positions and how individuals met those qualifications.

Mr. Pindar, a currently employed OAG Criminal Investigator II, argued in substance that his grievances were filed following the promotion of two candidates to address portions of NAC 284 that were not complied with, specifically relating to: (1) the NEATS posting for the Supervisor position; (2) the publishing of the eligibility list; and (3) moving forward with the promotions, once the grievances were filed. Mr. Pindar indicated that he was seeking information on what qualifications needed to be met for the Supervisor position, and for a complete evaluation of the hiring process to determine candidate qualifications.

Chief DAG Vandenberg argued in substance that Mr. Harris was attempting to present evidence outside the scope of the original grievances filed. Chief DAG Vandenberg further noted that Mr. Harris and Mr. Pindar's pre-hearing statements provide for three points of contention: (1) the OAG failed to comply with the NAC by posting the Supervisor position recruitment as open competitive; (2) the OAG violated the NAC by publishing two lists of eligible candidates for the Supervisor position; and (3) the OAG moved forward with the promotions despite the grievances being filed. Whereas, Grievance Nos. 5809 and 5810 contested whether one of the incumbents chosen to fill the Supervisor position met the minimum qualifications for the position and Grievance Nos. 5837 and 5836 contested the eligibility of the other incumbent due to their service with the State. Further, Chief DAG Vandenberg added in substance that the grievances were filed after the two Supervisor positions were filled, and NAC 284.329 relates to grievances filed concerning examinations, not grievances filed related to the interview and selection process by the appointing authority.

Chief DAG Vandenberg requested the Committee dismiss and not hear any matter outside the scope of the original filed grievances. Chief DAG Vandenberg argued in substance that the points of contention argued by

the Grievant were actions not performed by the OAG, but rather actions taken by DHRM. The OAG does not post recruitments or compile and publish lists of eligible candidates for positions; DHRM does. Chief DAG Vandenberg requested that the Committee only hear arguments related to whether one incumbent met the minimum qualifications and whether the other incumbent was eligible, as these were the originally grieved issues.

Furthermore, Chief DAG Vandenberg argued in substance that these originally grieved issues do not meet the definition of grievance because there was no injustice relating to any condition arising out of a relationship between an employer and employee. DHRM posted the Supervisor positions, determined the minimum qualifications and certified the list of eligible applicants, not the OAG. The grievances reference conditions arising from outside agency (DHRM) actions before the appointing authority (OAG) participates in the selection and hiring process, and consequently, Chief DAG Vandenberg argued the grievances must be denied.

Deputy Chief Bowen testified in substance that he was on a panel with two other OAG deputy chiefs to interview and score the eligible candidates for the open Supervisor positions. The OAG received a certified list of five eligible candidates from DHRM. All five candidates were interviewed and asked the same questions, with each question carrying a maximum of 7-8 points for a total score of approximately 50 points. Deputy Chief Bowen further noted in substance that he confirmed the accuracy of the candidate scores listed on Exhibit E of the OAG's packet.

Deputy Chief Bowen testified that he did not create, or otherwise participate in the creation of the certified list of eligible candidates, review applications, or determine the minimum qualifications of applicants. Deputy Chief Bowen also stated that aside from indicating the hiring was needed, he was not designated as the hiring manager for the recruitment process and did not review the position posting. OAG employees, Ms. Barrette and Gloria Navarro, worked with DHRM regarding the position postings.

According to Deputy Chief Bowen, at some time during the interviews of the five eligible candidates, Ms. Barrette indicated that DHRM had sent another certified list with an additional eligible candidate. Deputy Chief Bowen testified in substance that the OAG did not interview the sixth eligible candidate per DHRM's instruction, and the second eligibility list did not affect the scoring of the five candidates interviewed by the OAG.

Chief Swanson testified that the Attorney General is the last person to approve the recommendations for open positions within the OAG. Chief Swanson further stated in substance that he is to provide recruitment notices to OAG personnel to forward to DHRM for posting, and that he

does not review applications or determine minimum qualifications of applicants. DHRM provides a certified list of eligible candidates already ranked to the OAG. Chief Swanson noted that there was no relationship between the second eligibility list containing the sixth candidate generated by DHRM and the scoring of the five interviewed candidates for the Supervisor positions.

Chief DAG Vandenberg moved to dismiss Mr. Harris' Grievance Nos. 5809 and 5837 and Mr. Pindar's Grievance Nos. 5810 and 5836 for failing to demonstrate the OAG violated a regulation, statute or policy, and based upon past grievance Decision Nos. 20-16, 29-17, and 17-18. Chief DAG Vandenberg added that all three past grievance decisions referenced related to recruitment disputes where the EMC denied the grievances and found the employees failed to demonstrate a violation of statute, regulation or policy by the agency.

In support of the motion to dismiss, Chief DAG Vandenberg argued in substance that the grievances were directed at actions taken by an outside agency. DHRM posted the recruitment for the Supervisor positions, reviewed applicants for minimum qualifications, and presented a certified list of eligible candidates to the OAG. Chief DAG Vandenberg further argued that the OAG conducted interviews of the five eligible candidates listed on the certified list generated by DHRM, which was the appropriate process and not a violation of any statute, regulation or policy. Chief DAG Vandenberg added that per NRS 284.020(2), it was within the OAG's discretion to manage the affairs of the agency as seen fit and hire the two incumbents.

In opposition, Mr. Harris stated in substance that he and Mr. Pindar were not asking to be promoted, but for the OAG to follow the posting by meeting the minimum criteria set forth in the posting.

Mr. Pindar argued in substance that DHRM is acting on behalf of the OAG because NAC 284.295(3) requires the appointing authority (OAG) to certify in writing to DHRM that it is in the best interest of the agency to expand the recruitment. While the appointments are made by the OAG, DHRM does not open a recruitment on its own absent the request in writing. Mr. Pindar further argued in substance that NAC 284.295 allows for open recruitment only in instances where the class is one in which applicants for promotion are not normally available. Mr. Pindar noted that that OAG could not have met such requirement because Chief Swanson testified that at least four OAG employees have been promoted. Mr. Pindar concluded that the posting was inappropriate and failed to follow NAC 284.295.

Referencing NAC 284.297, Mr. Pindar argued in substance that open recruitment is utilized to garner a larger pool of applicants; however, the recruitment for the Supervisor positions opened on June 6th and closed on June 11th. As a result, Mr. Pindar noted that such a short timeframe did not provide persons outside of the OAG with an opportunity to apply

for the positions. Mr. Pindar also disputed the second certified list of eligible candidates because it did not comply with NAC 284.313(3) in that DHRM did not have the application of the candidate stationed out of the country by 5 p.m. on the closing date.

Mr. Pindar further noted in substance that pursuant to NAC 284.329, the examination, which he argued includes the application and minimum qualifications, is a part of the recruitment process. Mr. Pindar argued that grievances related to the recruitment process could not have been filed until he was made aware of the actual appointments, and therefore, consideration should be given to the grievances filed the day after the appointments were made. Mr. Pindar conceded the OAG has the right to manage as seen fit and hire from the interviewed candidates. However, Mr. Pindar argued in substance that the problem is with the certified list including candidates that did not meet the minimum qualifications.

In rebuttal, Chief DAG Vandenberg noted that the grievances failed to grieve the posting as inappropriate, and it is improper to present new issues in Step 4 of the grievance process. Chief DAG Vandenberg further argued that the second certified list of eligible candidates did not have any effect on the recruitment process, as the interviews were already complete when the sixth candidate was added.

Committee Member Schreckengost asked Mr. Harris and Mr. Pindar what steps they took with their chain of command prior to filing the grievances, what responses were received, if any, and what prompted the filing of the grievances. Mr. Harris stated in substance that following a telephone call with Chief Swanson alerting him to the hiring of the incumbents, he filed the grievances. Mr. Pindar stated that he did not have any conversations with the chain of command following the appointments and filed his grievances, believing the OAG would stand by the decision to hire the incumbents.

The EMC discussed and deliberated on the motion to dismiss the grievances. Committee Member Schreckengost posed questions and concerns related to the grievances being directed at DHRM and whether the State of Nevada, and therefore, DHRM as an agency of the State, meet the definition of employer to establish the employer-employee relationship required by the definition of a grievance. Committee Member Schreckengost expressed further concerns as to whether Grievant's hands are tied when a grievance can only be filed against an employer, who appears not to have committed any wrongdoing in this matter, but there is a potential issue with the recruitment process conducted by an outside agency.

Chair Puglisi directed the EMC to NAC 284.341(6), wherein if there is a dispute with the examination or recruitment process, then the candidate must submit a written request for review to DHRM before filing a grievance. Chair Puglisi noted that such did not happen in this case. Committee Member Schreckengost agreed with Chair Puglisi but noted

that the issue is whether two candidates should have been placed on the certified list if they did not meet the minimum qualifications or eligibility requirements. Committee Member Schreckengost further added questions related to whether the EMC is limiting a grievance to an agency that an employee works for, or whether a grievance can be directed to an outside agency within the State, such as DHRM. Committee Members Thompson and Novotny shared Member Schreckengost's concerns.

Chair Puglisi stated that both grievants were on the list and received interviews but were simply not selected. Chair Puglisi noted the OAG has the right to run its agency as seen fit and can hire who it wants to hire, as long as the interview and selection processes were followed. Additionally, Chair Puglisi stated that if DHRM did not follow the recruitment process appropriately, then there is a process in the NAC for disputes, which was not followed in this case.

Committee Member Schreckengost reiterated his prior concerns, particularly with NAC 284.295 applying to the State and not the OAG. Committee Member Schreckengost noted he did not see where the OAG violated any statute, regulation or policy, but he had a concern that the State failed the grievants. Committee Member Thompson stated that her wages indicate State of Nevada, rather than the agency she is employed by.

In response to questioning, Chief DAG Vandenberg stated she has no reason to believe that the two incumbents did not meet the minimum qualifications or eligibility requirements. Chair Puglisi referenced NAC 284.345, stating that if there were an error, then DHRM can make the appropriate correction to an eligibility list, but there is no proof of error at this time.

A motion was made by Committee Member Schreckengost to deny the motion to dismiss.[1] The EMC voted to deny the motion to dismiss and continue the hearing on Grievance Nos. 5809, 5810, 5836 and 5837.

Ms. Sullivan testified in substance that she became aware of the grievants' issues related to minimum qualifications and selection after the grievances were filed. Ms. Sullivan further testified that the recruitment for the Supervisor positions is historically posted as open competitive because there tends not to be more than five eligible candidates applying. For recruitment purposes, five candidates are the minimum number of candidates required for a certified list of eligible candidates. Ms. Sullivan added in substance that there are factors that would allow an open competitive recruitment versus a departmental recruitment: postings that do not result in five or more candidates; the wants of the agency; and NAC 284.297. NAC 284.297 indicates the need

[1] Three Committee members voted in favor of Member Schreckengost's motion to deny the motion to dismiss: Member Schreckengost, Member Thompson, and Member Novotny. Chair Puglisi voted against the motion to deny the OAG's motion to dismiss Grievance Nos. 5809, 5810, 5836 and 5837.

to provide all citizens a fair and equal opportunity for public service; the composition of the workforce in relation to the plan for affirmative action; the needs of the agency in accomplishing its objectives; and the possibility if any loss of federal money or other sanctions that may be imposed.

Ms. Sullivan stated that in her opinion, open recruitment was in the best interest of the OAG. As a result of the grievances, Ms. Sullivan reviewed the applications for the Supervisor positions and determined that all of the applicants on the certified list met the minimum qualifications. Ms. Sullivan noted the only irregularity was the issuance of second certified list of eligible applicants due to the allowance of late materials from the applicant stationed out of country.

The stated minimum qualifications on recruitment postings are from class specifications created by DHRM and agency subject matter experts and approved by the State Personnel Commission. Ms. Sullivan testified in substance that an evaluation of an applicant's work experience, education and/or equivalent combination is required to determine whether minimum qualifications are met. Recruitment for the Supervisor positions required ranking by the training/experience examination with applicants receiving a score based upon answers to a series of questions. Additionally, there is no minimum service requirement for an open competitive recruitment.

Ms. Sullivan further testified that NAC 284.329 references the training/experience examinations and does not include actual interviews. Ms. Sullivan stated in substance that NAC 284.329 allows for a grievance concerning only the grievant's examination and ranking, not the examination of other applicants, which is confidential. Ms. Sullivan added that more than educational or work service years are included in computing whether minimum qualifications are met. Additional experience, including closely related field experience and relevant coursework are factors. Ms. Sullivan also stated that this recruitment could be closed after receiving five eligible candidates, or at any time, as deemed appropriate.

Mr. Foster testified in substance that his job duties include recruitment, screening applications and scoring training/experience examinations for DHRM. Ms. Sullivan assigned the Supervisor positions recruitment to Mr. Foster, who reviewed requirements and checked for changes with class specifications prior to opening the recruitment. Mr. Foster stated in substance he reviewed work history related to criminal investigations and law enforcement, as well as education and POST category for the Supervisor positions recruitment. Mr. Foster recalled reviewing seven applications for the recruitment, with six of the applicants meeting the minimum qualifications. Following the review of the applications, Mr. Foster scored the training/experience examination in order to construct the eligibility list.

Mr. Foster noted in substance that the OAG did not have involvement in the recruitment process; however, Mr. Foster did inform the OAG that he was extending a courtesy to the applicant stationed out of the country for the allowance of late materials. Mr. Foster testified that he issued the certified list of eligible candidates with ranks determined by the scores of the training/experience examinations. Mr. Foster further testified that he did not have any contact or discussion with the OAG concerning the evaluation of the applications, the applicants' minimum qualifications, or generating the certified list.

Mr. Foster stated that he believed the minimum qualifications of the applicants in this case were accurately evaluated. Mr. Foster also noted in substance that in response to the grievances, he reevaluated the applications to ensure the appropriate process was followed and the candidates on the certified list met the minimum qualifications.

In closing, Mr. Harris noted in substance that the grievances were filed due to the minimum qualifications set forth in the NEATS posting, and that there is a flaw that needs to be addressed and fixed.

Chief DAG Vandenberg argued in closing that there have been no demonstrated violations of any statute, regulation or policy by the OAG or the State. The recruitment was posted as open competitive because it was in the best interest of the OAG to ensure ample applicants for the Supervisor positions. Chief DAG Vandenberg added that Ms. Sullivan and Mr. Foster, both seasoned recruiters, screened the applications and confirmed that all candidates on the certified list met the minimum qualifications and were eligible to apply for the positions. Chief DAG Vandenberg requested the EMC to deny all four grievances.

The EMC deliberated on Grievance Nos. 5809, 5810, 5836 and 5837. Committee Member Schreckengost stated that he did not see any violation of statute, regulation or policy. A motion was made by Committee Member Schreckengost to deny Grievance Nos. 5809, 5810, 5836 and 5837 because there has been no violation of the NRS 284 or NAC 284 by the State or the OAG, and the EMC cannot provide the relief either Mr. Harris or Mr. Pindar was seeking. Member Thompson seconded Member Schreckengost's motion and the EMC voted unanimously to deny 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 was formerly employed by the OAG as a Criminal Investigator II and was employed as such at the time of his grievances.
2. Grievant was a non-exempt State of Nevada employee.

3. DHRM posted the two Criminal Investigator Supervisor positions within the OAG as an open competitive recruitment.
4. DHRM and agency subject matter experts created the class specifications, which included the minimum qualifications listed on the recruitment posting for the Supervisor positions. The class specifications for the Supervisor positions were approved by the State Personnel Commission.
5. Grievant submitted an application for a Supervisor position.
6. DHRM screened applications for the Supervisor positions, placing candidates that met the minimum qualifications on a certified list. DHRM also scored the training/experience examinations and based on such score, ranked the eligible candidates on the certified list.
7. The certified list of eligible candidates for the Supervisor positions contained five names, including Grievant. DHRM provided the OAG with the certified list.
8. The OAG interviewed Grievant and the other four eligible candidates on the certified list. All five candidates were asked the same interview questions and scored.
9. An eligible applicant was granted an allowance to submit materials late due to being stationed out of the country. As a result, a second list of eligible candidates, now including the applicant stationed out of the country, was generated by DHRM and given to the OAG.
10. The OAG did not conduct an interview of the sixth eligible candidate stationed out of the country. The second certified list of eligible candidates did not change the scores of the five interviewed candidates.
11. Grievant was not hired for a Supervisor position. Grievant filed his grievances after the two Supervisor positions were filled.

CONCLUSIONS OF LAW

1. For these grievances, it was Grievant's burden to establish that his employer violated a statute, regulation or policy related to the recruitment and hiring process for the two Criminal Investigator Supervisor positions.
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. Mr. Harris' grievances fall within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. The Criminal Investigator Supervisor positions within the OAG were posted as open competitive pursuant to NAC 284.297 and in accordance with the needs of the OAG.
6. It was not proven by a preponderance of the evidence that DHRM violated any statute, regulation or policy in: (1) screening applications; (2) the determination

7. of whether applicants met the minimum qualifications; and (3) the construction of the certified list of eligible candidates.
8. NAC 284.329 only allows for a grievance concerning the grievant's examination, and not the examination of other applicants, which is deemed confidential.
9. Pursuant to NRS 284.020(2), the OAG has the authority to conduct and manage its affairs as seen fit. The ability to hire a candidate from a certified list of eligible candidates falls within the authority granted to the OAG under NRS 284.020(2).
10. It was not proven by a preponderance of the evidence that the OAG and/or the State violated any statute, regulation or policy in the recruitment and hiring process for the Criminal Investigator Supervisor positions.

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:
Mr. Harris' grievances identified as Grievance Nos. 5809 and 5837 are DENIED.[2]

MOTION: Moved to deny Grievance Nos. 5809, 5810, 5836 and 5837 because there has been no violation of the NRS 284 or NAC 284 by the State or the OAG, and the EMC cannot provide the relief either Mr. Harris or Mr. Pindar was seeking.
BY: Member Schreckengost
SECOND: Member Thompson
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Grievance #5810 and #5836 of Alwyn Pindar, Office of the Attorney General – Action Item

Mr. Pindar appeared at the hearing on this date in proper person. Chief Deputy Attorney General, Cameron Vandenberg (Chief DAG Vandenberg), represented the agency/employer, the State of Nevada, Office of the Attorney General (OAG). Mr. Pindar's Grievance Nos. 5809 and 5837 were heard simultaneously with Grievance Nos. 5809 and 5837 filed by Jason Harris (Mr. Harris).

There were no objections to the exhibit packets submitted by the parties. Shaun Bowen (Deputy Chief Bowen), OAG Deputy Chief Investigator, Roland Swanson (Chief Swanson), OAG Chief of Investigations, Mr. Harris, and Grievant were sworn in and testified on behalf of Grievant. Kara Sullivan (Ms. Sullivan), Division of Human Resource Management (DHRM) Supervisory Personnel Analyst and Adrian Foster (Mr. Foster), DHRM Personnel Analyst III, were sworn in and testified on behalf of

[2] Committee Member Ron Schreckengost's motion to deny the grievances was seconded by Committee Member Sherri Thompson and carried by a unanimous vote in favor of the motion.

the OAG. Additionally, Jennifer Davies, OAG Deputy Chief Investigator, and Kristina Barrette (Ms. Barrette), OAG Personnel Analyst II, were present and sworn in, but did not provide testimony in the matter.

STATEMENT OF THE CASE

Mr. Pindar is currently employed with the OAG as a Criminal Investigator II. Mr. Pindar argued in substance that his grievances were filed following the promotion of two candidates to address portions of NAC 284 that were not complied with, specifically relating to: (1) the Nevada Action and Timekeeping System (NEATS) posting for the OAG Criminal Investigator Supervisor (Supervisor) positions; (2) the publishing of the eligibility list; and (3) moving forward with the promotions, once the grievances were filed. Mr. Pindar indicated that he was seeking information on what qualifications needed to be met for the Supervisor position, and for a complete evaluation of the hiring process to determine candidate qualifications.

Mr. Harris, a former OAG Criminal Investigator II, argued in substance that he filed his grievances because the Nevada Revised Statutes (NRS) were violated and the qualifications posted in NEATS for the two open Supervisor positions were not followed. Mr. Harris indicated that he was seeking clarification on the mandatory qualifications listed in the NEATS posting for the Supervisor positions and how individuals met those qualifications.

Chief DAG Vandenberg argued in substance that Mr. Pindar was attempting to present evidence outside the scope of the original grievances filed. Chief DAG Vandenberg further noted that Mr. Pindar and Mr. Harris' pre-hearing statements provide for three points of contention: (1) the OAG failed to comply with the NAC by posting the Supervisor position recruitment as open competitive; (2) the OAG violated the NAC by publishing two lists of eligible candidates for the Supervisor position; and (3) the OAG moved forward with the promotions despite the grievances being filed. Whereas, Grievance Nos. 5810 and 5809 contested whether one of the incumbents chosen to fill the Supervisor position met the minimum qualifications for the position and Grievance Nos. 5836 and 5837 contested the eligibility of the other incumbent due to their service with the State. Further, Chief DAG Vandenberg added in substance that the grievances were filed after the two Supervisor positions were filled, and NAC 284.329 relates to grievances filed concerning examinations, not grievances filed related to the interview and selection process by the appointing authority.

Chief DAG Vandenberg requested the Committee dismiss and not hear any matter outside the scope of the original filed grievances. Chief DAG Vandenberg argued in substance that the points of contention argued by the Grievant were actions not performed by the OAG, but rather actions taken by DHRM. The OAG does not post recruitments or compile and

publish lists of eligible candidates for positions; DHRM does. Chief DAG Vandenberg requested that the Committee only hear arguments related to whether one incumbent met the minimum qualifications and whether the other incumbent was eligible, as these were the originally grieved issues.

Furthermore, Chief DAG Vandenberg argued in substance that these originally grieved issues do not meet the definition of grievance because there was no injustice relating to any condition arising out of a relationship between an employer and employee. DHRM posted the Supervisor positions, determined the minimum qualifications and certified the list of eligible applicants, not the OAG. The grievances reference conditions arising from outside agency (DHRM) actions before the appointing authority (OAG) participates in the selection and hiring process, and consequently, Chief DAG Vandenberg argued the grievances must be denied.

Deputy Chief Bowen testified in substance that he was on a panel with two other OAG deputy chiefs to interview and score the eligible candidates for the open Supervisor positions. The OAG received a certified list of five eligible candidates from DHRM. All five candidates were interviewed and asked the same questions, with each question carrying a maximum of 7-8 points for a total score of approximately 50 points. Deputy Chief Bowen further noted in substance that he confirmed the accuracy of the candidate scores listed on Exhibit E of the OAG's packet.

Deputy Chief Bowen testified that he did not create, or otherwise participate in the creation of the certified list of eligible candidates, review applications, or determine the minimum qualifications of applicants. Deputy Chief Bowen also stated that aside from indicating the hiring was needed, he was not designated as the hiring manager for the recruitment process and did not review the position posting. OAG employees, Ms. Barrette and Gloria Navarro, worked with DHRM regarding the position postings.

According to Deputy Chief Bowen, at some time during the interviews of the five eligible candidates, Ms. Barrette indicated that DHRM had sent another certified list with an additional eligible candidate. Deputy Chief Bowen testified in substance that the OAG did not interview the sixth eligible candidate per DHRM's instruction, and the second eligibility list did not affect the scoring of the five candidates interviewed by the OAG.

Chief Swanson testified that the Attorney General is the last person to approve the recommendations for open positions within the OAG. Chief Swanson further stated in substance that he is to provide recruitment notices to OAG personnel to forward to DHRM for posting, and that he does not review applications or determine minimum qualifications of applicants. DHRM provides a certified list of eligible candidates already

ranked to the OAG. Chief Swanson noted that there was no relationship between the second eligibility list containing the sixth candidate generated by DHRM and the scoring of the five interviewed candidates for the Supervisor positions.

Chief DAG Vandenberg moved to dismiss Mr. Harris' Grievance Nos. 5809 and 5837 and Mr. Pindar's Grievance Nos. 5810 and 5836 for failing to demonstrate the OAG violated a regulation, statute or policy, and based upon past grievance Decision Nos. 20-16, 29-17, and 17-18. Chief DAG Vandenberg added that all three past grievance decisions referenced related to recruitment disputes where the EMC denied the grievances and found the employees failed to demonstrate a violation of statute, regulation or policy by the agency.

In support of the motion to dismiss, Chief DAG Vandenberg argued in substance that the grievances were directed at actions taken by an outside agency. DHRM posted the recruitment for the Supervisor positions, reviewed applicants for minimum qualifications, and presented a certified list of eligible candidates to the OAG. Chief DAG Vandenberg further argued that the OAG conducted interviews of the five eligible candidates listed on the certified list generated by DHRM, which was the appropriate process and not a violation of any statute, regulation or policy. Chief DAG Vandenberg added that per NRS 284.020(2), it was within the OAG's discretion to manage the affairs of the agency as they seen fit and hire the two incumbents.

In opposition, Mr. Harris stated in substance that he and Mr. Pindar were not asking to be promoted, but for the OAG to follow the posting by meeting the minimum criteria set forth in the posting.

Mr. Pindar argued in substance that DHRM is acting on behalf of the OAG because NAC 284.295(3) requires the appointing authority (OAG) to certify in writing to DHRM that it is in the best interest of the agency to expand the recruitment. While the appointments are made by the OAG, DHRM does not open a recruitment on its own absent the request in writing. Mr. Pindar further argued in substance that NAC 284.295 allows for open recruitment only in instances where the class is one in which applicants for promotion are not normally available. Mr. Pindar noted that that OAG could not have met such requirement because Chief Swanson testified that at least four OAG employees have been promoted. Mr. Pindar concluded that the posting was inappropriate and failed to follow NAC 284.295.

Referencing NAC 284.297, Mr. Pindar argued in substance that open recruitment is utilized to garner a larger pool of applicants; however, the recruitment for the Supervisor positions opened on June 6th and closed on June 11th. As a result, Mr. Pindar noted that such a short timeframe did not provide persons outside of the OAG with an opportunity to apply for the positions. Mr. Pindar also disputed the second certified list of eligible candidates because it did not comply with NAC 284.313(3) in

that DHRM did not have the application of the candidate stationed out of the country by 5 p.m. on the closing date.

Mr. Pindar further noted in substance that pursuant to NAC 284.329, the examination, which he argued includes the application and minimum qualifications, is a part of the recruitment process. Mr. Pindar argued that grievances related to the recruitment process could not have been filed until he was made aware of the actual appointments, and therefore, consideration should be given to the grievances filed the day after the appointments were made. Mr. Pindar conceded the OAG has the right to manage as seen fit and hire from the interviewed candidates. However, Mr. Pindar argued in substance that the problem is with the certified list including candidates that did not meet the minimum qualifications.

In rebuttal, Chief DAG Vandenberg noted that the grievances failed to grieve the posting as inappropriate, and it is improper to present new issues in Step 4 of the grievance process. Chief DAG Vandenberg further argued that the second certified list of eligible candidates did not have any effect on the recruitment process, as the interviews were already complete when the sixth candidate was added.

Committee Member Schreckengost asked Mr. Harris and Mr. Pindar what steps they took with their chain of command prior to filing the grievances, what responses were received, if any, and what prompted the filing of the grievances. Mr. Harris stated in substance that following a telephone call with Chief Swanson alerting him to the hiring of the incumbents, he filed the grievances. Mr. Pindar stated that he did not have any conversations with the chain of command following the appointments and filed his grievances, believing the OAG would stand by the decision to hire the incumbents.

The EMC discussed and deliberated on the motion to dismiss the grievances. Committee Member Schreckengost posed questions and concerns related to the grievances being directed at DHRM and whether the State of Nevada, and therefore, DHRM as an agency of the State, meet the definition of employer to establish the employer-employee relationship required by the definition of a grievance. Committee Member Schreckengost expressed further concerns as to whether Grievant's hands are tied when a grievance can only be filed against an employer, who appears not to have committed any wrongdoing in this matter, but there is a potential issue with the recruitment process conducted by an outside agency.

Chair Puglisi directed the EMC to NAC 284.341(6), wherein if there is a dispute with the examination or recruitment process, then the candidate must submit a written request for review to DHRM before filing a grievance. Chair Puglisi noted that such did not happen in this case. Committee Member Schreckengost agreed with Chair Puglisi but noted that the issue is whether two candidates should have been placed on the certified list if they did not meet the minimum qualifications or eligibility

requirements. Committee Member Schreckengost further added questions related to whether the EMC is limiting a grievance to an agency that an employee works for, or whether a grievance can be directed to an outside agency within the State, such as DHRM. Committee Members Thompson and Novotny shared Member Schreckengost's concerns.

Chair Puglisi stated that both grievants were on the list and received interviews but were simply not selected. Chair Puglisi noted the OAG has the right to run its agency as seen fit and can hire who it wants to hire, as long as the interview and selection processes were followed. Additionally, Chair Puglisi stated that if DHRM did not follow the recruitment process appropriately, then there is a process in the NAC for disputes, which was not followed in this case.

Committee Member Schreckengost reiterated his prior concerns, particularly with NAC 284.295 applying to the State and not the OAG. Committee Member Schreckengost noted he did not see where the OAG violated any statute, regulation or policy, but he had a concern that the State failed the grievants. Committee Member Thompson stated that her wages indicate State of Nevada, rather than the agency she is employed by.

In response to questioning, Chief DAG Vandenberg stated she has no reason to believe that the two incumbents did not meet the minimum qualifications or eligibility requirements. Chair Puglisi referenced NAC 284.345, stating that if there were an error, then DHRM can make the appropriate correction to an eligibility list, but there is no proof of error at this time.

A motion was made by Committee Member Schreckengost to deny the motion to dismiss.[3] The EMC voted to deny the motion to dismiss and continue the hearing on Grievance Nos. 5809, 5810, 5836 and 5837.

Ms. Sullivan testified in substance that she became aware of the grievants' issues related to minimum qualifications and selection after the grievances were filed. Ms. Sullivan further testified that the recruitment for the Supervisor positions is historically posted as open competitive because there tends not to be more than five eligible candidates applying. For recruitment purposes, five candidates are the minimum number of candidates required for a certified list of eligible candidates. Ms. Sullivan added in substance that there are factors that would allow an open competitive recruitment versus a departmental recruitment: postings that do not result in five or more candidates; the wants of the agency; and NAC 284.297. NAC 284.297 indicates the need to provide all citizens a fair and equal opportunity for public service; the composition of the workforce in relation to the plan for affirmative

[3] Three Committee members voted in favor of Member Schreckengost's motion to deny the motion to dismiss: Member Schreckengost, Member Thompson, and Member Novotny. Chair Puglisi voted against the motion to deny the OAG's motion to dismiss Grievance Nos. 5809, 5810, 5836 and 5837.

action; the needs of the agency in accomplishing its objectives; and the possibility if any loss of federal money or other sanctions that may be imposed.

Ms. Sullivan stated that in her opinion, open recruitment was in the best interest of the OAG. As a result of the grievances, Ms. Sullivan reviewed the applications for the Supervisor positions and determined that all of the applicants on the certified list met the minimum qualifications. Ms. Sullivan noted the only irregularity was the issuance of second certified list of eligible applicants due to the allowance of late materials from the applicant stationed out of country.

The stated minimum qualifications on recruitment postings are from class specifications created by DHRM and agency subject matter experts and approved by the State Personnel Commission. Ms. Sullivan testified in substance that an evaluation of an applicant's work experience, education and/or equivalent combination is required to determine whether minimum qualifications are met. Recruitment for the Supervisor positions required ranking by the training/experience examination with applicants receiving a score based upon answers to a series of questions. Additionally, there is no minimum service requirement for an open competitive recruitment.

Ms. Sullivan further testified that NAC 284.329 references the training/experience examinations and does not include actual interviews. Ms. Sullivan stated in substance that NAC 284.329 allows for a grievance concerning only the grievant's examination and ranking, not the examination of other applicants, which is confidential. Ms. Sullivan added that more than educational or work service years are included in computing whether minimum qualifications are met. Additional experience, including closely related field experience and relevant coursework are factors. Ms. Sullivan also stated that this recruitment could be closed after receiving five eligible candidates, or at any time, as deemed appropriate.

Mr. Foster testified in substance that his job duties include recruitment, screening applications and scoring training/experience examinations for DHRM. Ms. Sullivan assigned the Supervisor positions recruitment to Mr. Foster, who reviewed requirements and checked for changes with class specifications prior to opening the recruitment. Mr. Foster stated in substance he reviewed work history related to criminal investigations and law enforcement, as well as education and POST category for the Supervisor positions recruitment. Mr. Foster recalled reviewing seven applications for the recruitment, with six of the applicants meeting the minimum qualifications. Following the review of the applications, Mr. Foster scored the training/experience examination in order to construct the eligibility list.

Mr. Foster noted in substance that the OAG did not have involvement in the recruitment process; however, Mr. Foster did inform the OAG that

he was extending a courtesy to the applicant stationed out of the country for the allowance of late materials. Mr. Foster testified that he issued the certified list of eligible candidates with ranks determined by the scores of the training/experience examinations. Mr. Foster further testified that he did not have any contact or discussion with the OAG concerning the evaluation of the applications, the applicants' minimum qualifications, or generating the certified list.

Mr. Foster stated that he believed the minimum qualifications of the applicants in this case were accurately evaluated. Mr. Foster also noted in substance that in response to the grievances, he reevaluated the applications to ensure the appropriate process was followed and the candidates on the certified list met the minimum qualifications.

In closing, Mr. Harris noted in substance that the grievances were filed due to the minimum qualifications set forth in the NEATS posting, and that there is a flaw that needs to be addressed and fixed.

Chief DAG Vandenberg argued in closing that there has been no demonstrated violations of any statute, regulation or policy by the OAG or the State. The recruitment was posted as open competitive because it was in the best interest of the OAG to ensure ample applicants for the Supervisor positions. Chief DAG Vandenberg added that Ms. Sullivan and Mr. Foster, both seasoned recruiters, screened the applications and confirmed that all candidates on the certified list met the minimum qualifications and were eligible to apply for the positions. Chief DAG Vandenberg requested the EMC to deny all four grievances.

The EMC deliberated on Grievance Nos. 5809, 5810, 5836 and 5837. Committee Member Schreckengost stated that he did not see any violation of statute, regulation or policy. A motion was made by Committee Member Schreckengost to deny Grievance Nos. 5809, 5810, 5836 and 5837 because there has been no violation of the NRS 284 or NAC 284 by the State or the OAG, and the EMC cannot provide the relief either Mr. Harris or Mr. Pindar was seeking. Member Thompson seconded Member Schreckengost's motion and the EMC voted unanimously to deny 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 currently employed by the OAG as a Criminal Investigator I and was employed as such at the time of his grievances.
2. Grievant is a non-exempt State of Nevada employee.
3. DHRM posted the two Criminal Investigator Supervisor positions within the OAG as an open competitive recruitment.

4. DHRM and agency subject matter experts created the class specifications, which included the minimum qualifications listed on the recruitment posting for the Supervisor positions. The class specifications for the Supervisor positions were approved by the State Personnel Commission.
5. Grievant submitted an application for a Supervisor position.
6. DHRM screened applications for the Supervisor positions, placing candidates that met the minimum qualifications on a certified list. DHRM also scored the training/experience examinations and based on such score, ranked the eligible candidates on the certified list.
7. The certified list of eligible candidates for the Supervisor positions contained five names, including Grievant. DHRM provided the OAG with the certified list.
8. The OAG interviewed Grievant and the other four eligible candidates on the certified list. All five candidates were asked the same interview questions and scored.
9. An eligible applicant was granted an allowance to submit materials late due to being stationed out of the country. As a result, a second list of eligible candidates, now including the applicant stationed out of the country, was generated by DHRM and given to the OAG.
10. The OAG did not conduct an interview of the sixth eligible candidate stationed out of the country. The second certified list of eligible candidates did not change the scores of the five interviewed candidates.
11. Grievant was not hired for a Supervisor position. Grievant filed his grievances after the two Supervisor positions were filled.

CONCLUSIONS OF LAW

1. For these grievances, it was Grievant's burden to establish that his employer violated a statute, regulation or policy related to the recruitment and hiring process for the two Criminal Investigator Supervisor positions.
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. Mr. Pindar's grievances fall within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. The Criminal Investigator Supervisor positions within the OAG were posted as open competitive pursuant to NAC 284.297 and in accordance with the needs of the OAG.
6. It was not proven by a preponderance of the evidence that DHRM violated any statute, regulation or policy in: (1) screening applications; (2) the determination of whether applicants met the minimum qualifications; and

(3) the construction of the certified list of eligible candidates.

7. NAC 284.329 only allows for a grievance concerning the grievant's examination, and not the examination of other applicants, which is deemed confidential.
8. Pursuant to NRS 284.020(2), the OAG has the authority to conduct and manage its affairs as seen fit. The ability to hire a candidate from a certified list of eligible candidates falls within the authority granted to the OAG under NRS 284.020(2).
9. It was not proven by a preponderance of the evidence that the OAG and/or the State violated any statute, regulation or policy in the recruitment and hiring process for the Criminal Investigator Supervisor positions.

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:
Mr. Pindar's grievances identified as Grievance Nos. 5810 and 5836 are DENIED.[4]

MOTION: Moved to deny Grievance Nos. 5809, 5810, 5836 and 5837 because there has been no violation of the NRS 284 or NAC 284 by the State or the OAG, and the EMC cannot provide the relief either Mr. Harris or Mr. Pindar was seeking.
BY: Member Schreckengost
SECOND: Member Thompson
VOTE: The vote was unanimous in favor of the motion.

9. Discussion and possible action related to Grievance #5811 of Scott Henneforth, Department of Business and Industry, Taxicab Authority – 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 asked EMC Coordinator, Nora Johnson for clarification on the status of grievance #5811.

Ms. Johnson stated grievance #5811 had been determined to be agendized, a resolution conference was requested and was successful, however, Mr. Henneforth requested grievance #5811 be reinstated as he

[4] Committee Member Ron Schreckengost's motion to deny the grievances was seconded by Committee Member Sherri Thompson and carried by a unanimous vote in favor of the motion.

did not feel the agency honored their end of the resolution conference agreement.

Ms. Johnson stated upon that request, the EMC placed the grievance back in the scheduling que based on the agendized determination.

Chair Puglisi stated this was a complicated grievance and felt that if it was not moved to hearing, the Committee could not make a reasonable determination.

Member Thompson stated the grievant referred to a suspect being arrested and serving 3 ½ years and questioned if that referred to the incident in the grievance.

Chair Puglisi stated the statute in question used to define a taxicab investigator as a police officer.

Chair Puglisi stated assembly bill 487, which went into effect July 1, 2017, further defined taxicab investigator and added 'for the purposes of enforcing the provisions of chapter 706 of NRS, such an investigator enforcing the provisions of subsection (1) of NRS 706 a.280 pursuant to NRS 706.8818 must have probable cause that a driver is violating subsection (1) of NRS 706 a.280 to initiate a traffic stop of the drivers vehicle'.

Chair Puglisi stated one statute stated they are only to enforce the subsection which covers the Taxicab Authority, but NRS 289.340 stated 'Taxicab field investigators or an airport control officer designated by Taxicab Administrator enforcement of certain provisions governing transportation network companies'.

Chair Puglisi stated NRS 202.595 stated 'performance of act or neglect of duty and willful or wanton disregard of safety of persons or property penalties; unless a greater penalty is otherwise provided by statute and except under the circumstances described in NRS, a person who performs any act of, or neglects any duty imposed by law and willful or wanton disregard of safety of persons or property shall be punished. If the act or neglect does not result in the substantial bodily harm or death of a person it is a gross misdemeanor, if so, it is a Class B felony'.

Chair Puglisi stated it seemed like they were being told 'don't' but on the other side, they are being told 'if they don't, this punishment could happen'.

Chair Puglisi stated the grievance stated the Attorney General's Office (AG's) was involved and they have given new direction because this new language wasn't codified at the time.

Chair Puglisi stated the grievance was filed June 26, 2018 but was unsure of when the new language was codified.

Chair Puglisi stated he found the revision date of 2017 revision 38-39 and was not sure when they were saying it wasn't codified.

Chair Puglisi stated it seemed like the employee wants the employer to do something different; regulations state they have to enforce chapter 706, they get booked on misdemeanor fraud, but in the process the employee was sent out and if the statute says this, why were we sent out, but the person wasn't booked on other charges.

Member Schreckengost stated his professional, not Committee opinion, was to schedule for a hearing because in the past, Member Schreckengost has found himself dealing with conflicts in policy, statute with a lot of grey areas.

Member Schreckengost stated what he thought the grievant was asking for is fairly straight forward and that is 'don't put me and my peers in a position that's not defensible'.

Member Schreckengost stated he had a secondary concern that it went to resolution conference, things fell apart for whatever reason and the Committee should hear what the employee has to say as well as hear what his supervisors have to say.

Member Schreckengost his professional opinion, he has been in the position where things aren't always clear, law enforcement and being a sworn peace officer carries with it a tremendous amount of risk and liability issues.

Member Schreckengost stated he felt the grievant was asking for clarification so as not to be placed in a position that is untenable.

Member Schreckengost stated he did not think that was an unreasonable request, being part of the law enforcement community himself.

Member Thompson stated she agreed the Committee should hear the grievance.

Member Thompson stated it was difficult to hit a moving target when you don't know where to be or what you're supposed to be doing.

Member Thompson stated she believed it was the agency, the employers' responsibility to be very clear on what the employee's responsibility and duties are.

Member Novotny stated she agreed the Committee should hear the grievance.

Member Thompson motioned to move grievance #5811 of Scott Henneforth to hearing.

Member Schreckengost seconded the motion.

Chair Puglisi asked if there was any discussion on the motion, there was none.

The vote was unanimous in favor of the motion.

MOTION:	Moved to schedule grievance #5811 for hearing
BY:	Member Thompson
SECOND:	Member Schreckengost
VOTE:	The vote was unanimous in favor of the motion.

10. Public Comment

There were no comments in the North or in the South.

11. Adjournment

Chair Puglisi adjourned the meeting at approximately 11:56 am.