



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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Meeting Minutes of the Employee-Management Committee

Date: April 22, 2021

(Subject to Committee Approval)

Pursuant to Governor Sisolak's Declaration of Emergency Directives 026 and 029, requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate, is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). All meetings are held on MS Teams, and recorded.

Committee Members:

Management Representatives

Present

Ms. Pauline Beigel-Chair	X
Ms. Jennifer Bauer	X

Employee Representatives

Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Stephanie Parker-Co Vice Chair	
Mr. Gwyn Davies-Co Vice Chair	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Breece Flores, EMC Coordinator
Ms. Ivory Wright, EMC Hearing Clerk

1. Call to Order

Chair Beigel called the meeting to order at approximately 9:01 am.

2. Public Comment

There were none heard.

3. Committee introductions and meeting overview and/or update - For discussion only.

Chair Beigel opened the meeting with Committee introductions.

Chair Beigel stated #6 on the agenda for Jeremiah Hall grievance #7109 will be removed due to the EMC Coordinator Breece Flores has advised her that they have withdrawn their grievance prior to the hearing starting.

Chair Beigel asked Ms. Flores if all parties were present for the hearing.

Chair Beigel stated she had noted there was a hearing scheduled for #1 on the agenda and she didn't see the grievant nor the agency present.

Chair Beigel requested Ms. Flores to email Ms. Christina Leathers with NDOC and Ms. Teresa McCastle the grievant with a high priority email to let them know the EMC meeting was starting and wanted to know if either party were going to participate by phone.

Ms. Flores responded she would and was given a break to do so.

Chair Beigel stated she would move on to the next item on the agenda and Ms. Flores would let Chair know when the parties replied back.

4. Adoption of the Agenda – Action Item

Chair Beigel requested a motion to adopt the amended agenda.

MOTION: To adopt the amended agenda.

BY: Member Bauer

SECOND: Member Thompson

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

Chair Beigel stated in previous hearings the EMC has dismissed a grievance for the lack of participation.

Chair Beigel stated she was inclined to dismiss the grievance, due to them not showing up to participate.

Chair Beigel stated she asked the agency and the grievant to participate, they did not respond to answer questions the board had on the grievance, so she was moving forward to discuss at the end of the other items.

Chair Beigel moved on to the next item.

5. Discussion and possible action related to Grievance of Megan Penneau #7357, Department of Corrections – Action Item

Chair Beigel opened discussion for grievance #7357 for Megan Penneau.

Member Bauer stated for the record and transparency and full disclosure, she had previously been made aware of this grievance due to the former position as Medical Administrator at the Department of Corrections.

Member Bauer stated she did not respond to this grievance but was made aware of it due to her role with the facility.

Member Bauer stated she will and can remain impartial and neutral in deciding how to handle this grievance.

Chair Beigel stated to Mr. Whitney if she needed to make ruling or motion for Member Bauer's testimony.

Mr. Whitney responded that a ruling would not be needed as Member Bauer has made a disclosure pursuant to NRS 281(a).

Mr. Whitney asked Member Bauer if her ability would be compacted in any way to decide in any way.

Member Bauer responded to Mr. Whitney no, she did not feel her decision, or her opinions would be materially impacted in any way. She stated she can and will remain impartial.

Mr. Whitney stated he was satisfied with this.

Chair Beigel stated she wanted to make sure if it was necessary to ask this question on each grievance or can she make a statement for all three grievances listed on the agenda if Member Bauer had firsthand knowledge of the grievance.

Mr. Whitney responded it would be appropriate to disclose at the time it was being heard for each.

Member Bauer responded to Mr. Whitney that she preferred if she could disclose at each grievance before it is heard that was her preference.

Mr. Whitney agreed to state the disclosure before hearing each item she had knowledge of or could be a perceived conflict.

Chair Beigel opened discussion.

Member Thompson stated she did not think this was the EMC jurisdiction and the grievance mentioned EEO complaint.

Chair Beigel stated the grievance did list the remedy the grievant was asking for was to return to the shift without harassment and retaliation.

Member Russell stated she agreed with Member Thompson there was a concern of mentioning lack of jurisdiction due to the harassment.

Member Bauer stated she was going to refrain from being a witness on this matter and she spoke of her review of the grievance.

Member Bauer stated she agreed with Members Russell, and Member Thompson that the EMC lacked jurisdiction to offer remedy. She stated she would encourage the grievant to pursue other venues for potential remedy if the grievant feels they were being discriminated and retaliated against.

Member Bauer stated the EMC does not have authority to grant the proposed resolution.

Member Bauer stated the substance of the grievance is she wants her shift back and didn't think that is something the EMC can grant. She continued, If remedy cannot be offered, it would not be beneficial to grant this grievance to a full hearing.

Chair Beigel asked Mr. Whitney if the EMC could make the motion that the Agency can run as they see fit in NRS 284.020 or did they have to reference a decision that was similar to this grievance being heard.

Mr. Whitney responded that it would not be necessary to refer to a past decision in this case.

Chair Beigel asks the committee for a motion.

Member Thompson stated she moved to deny grievance #7357 for Megan Penneau per NRS 284.020, the Agency can run as they see necessary.

Member Bauer stated the motion on grievance #7357 is to move forward to a full hearing or deny as an agendaized grievance. She stated the details of the case were irrelevant, the only decision needed for that day was to move the grievance forward to hearing or deny any further action.

Member Bauer and Chair Beigel discussed the jurisdiction wording in NRS 284.020.

Member Bauer stated she wanted to make an amendment to Member Thompson's motion to include giving the advice to seek remedy in another venue and list the venue.

Member Thompson stated she agreed with Member Bauer on the amended motion.

Member Thompson stated she wanted the motion to state, to answer without a hearing based on the committee's previous decision and it did not fall within the EMC jurisdiction.

Mr. Whitney stated he would suggest mentioning the NRS 284.020 in the motion. He stated the Agency has the right to run their affairs as they see fit.

Mr. Whitney stated the EMC doesn't typically hear matters of harassment and retaliation, if it was possible to list the venue to be proper motion including NRS 284.020(2), and reference EEO Department.

Member Bauer stated she was in the decisions database for EMC to help Member Thompson with the wording used on previous decisions with the same complaint to use the language.

Member Thompson withdrew her motion.

Chair Beigel recognized Member Thompson's withdraw of the motion.

Member Bauer stated she moved to answer grievance #7357 without a hearing based on previous EMC decisions in accordance with NRS 284.020(2) and because the EMC has determined it lacks jurisdiction. The EMC recommends the grievant pursue available options in other venues for the allegations of discrimination and harassment.

Member Thompson seconded the motion.

Chair Beigel asked for further discussion.

Hearing none.

Chair Beigel asked Mr. Whitney if the motion was appropriate.

Mr. Whitney stated yes.

Chair Beigel tallied the roll call vote.

MOTION: Moved to deny grievance #7357 without a hearing based on previous EMC decisions in accordance with NRS 284.020(2) and because the EMC has determined it lacks jurisdiction. The EMC recommends the grievant pursue available options in other venues for the allegations of discrimination and harassment.

BY: Member Bauer

SECOND: Member Thompson

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

6. Discussion and possible action related to Grievance of Benedicto Gutierrez #7430, Department of Corrections – Action Item

Chair Beigel opened committee discussion.

Member Bauer stated for the record transparency and full disclosure, she had previously been made aware of this grievance due to the former position she held as the Medical Administrator at the Department of Corrections. For this specific grievance for Benedicto Gutierrez grievance #7430 she had responded at one of the steps in the grievance.

Member Bauer stated she has always been impartial and neutral that is her personal ethics and integrity. She stated she will remain impartial and neutral. She offered to recuse herself if the counsel advised her to do so.

Mr. Whitney stated if Member Bauer recused herself the matter would not be able to be heard as the EMC would not have quorum. He stated if that was

Member Bauer's choice this grievance would need to be reset for another date.

Chair Beigel stated to Mr. Whitney if he felt comfortable moving forward to have the same statement read on the record as with the last grievance.

Mr. Whitney responded by asking Member Bauer if she were to proceed on grievance #7430 for Mr. Benedicto Gutierrez would she be able to do so without her judgement being materially affected, and able to stay neutral.

Member Bauer stated she would continue to be neutral and remain without judgment being materially affected.

Chair Beigel opened up with discussion.

Member Thompson stated she didn't think the EMC had jurisdiction to hear this grievance if it moved to hearing.

Member Thompson stated when reviewing this grievance, the grievant is citing racial bias, she felt we would not have jurisdiction in this matter.

Member Russell stated she thought the motion would be identical to the last grievance that was proposed in the last grievance we just discussed. She stated she didn't think this could be moved forward to hearing.

Chair Beigel stated she agreed but didn't think they could cite the same NRS because this grievance was how the agency responded to the grievance not the action that done.

Member Bauer stated she agreed with the members and that the motion didn't need to include NRS 284.020. She stated she agreed with any proposed motion with a recommendation to pursue other venues for remedy as for the allegations of discrimination.

Member Bauer stated in this grievance there is more evidence and stronger allegations of racial discrimination and that was concerning.

Member Bauer stated she did not think the EMC could offer remedy to this grievants complaint.

Member Russell noted in a response that she had read an EEO complaint has already been filed but not by the grievant, it seemed it was for an investigation in the grievance.

Chair Beigel responded to Member Russell that it read that an investigation was filed with the EEO per the response from the Agency, but they encouraged him to file a complaint with the Inspector General's Office.

Member Thompson stated she felt this grievance was not in the EMC jurisdiction.

Chair Beigel stated there may be other options, as it read if the grievant didn't make a complaint with the Inspector General's Office that would be an

option, they could list in the decision letter for the grievant for allegations of racial discrimination.

Chair Beigel asked Mr. Whitney if they could use the recommendation to the Inspector General's Office in the remedy they could offer.

Mr. Whitney responded to Chair Beigel that would be appropriate and to list NAC 284.696.

Member Thompson stated she moved to answer grievance #7430 for Benedicto Gutierrez without a hearing based on previous decisions by the EMC in accordance with NRS 284.696 due to the EMC lacks jurisdiction, the EMC recommends the grievant pursue available options in other venues for the allegations of discrimination and harassment.

Chair Beigel responded to Member Thompson was that NRS or NAC.

Member Thompson responded it should be NAC corrected the statute is NAC 284.696.

Chair Beigel called for a vote.

MOTION: Moved to answer grievance #7430 for Benedicto Gutierrez without a hearing based on previous decisions by the EMC in accordance with NRS 284.696 due to the EMC lacks jurisdiction, the EMC recommends the grievant pursue available options in other venues for the allegations of discrimination and harassment.

BY: Member Thompson

SECOND: Member Russell

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

Chair Beigel opens up discussion for grievance #7465 Marquise Franklin.

Chair Beigel asked Member Bauer if she had to disclose on grievance #7465 for Marquise Franklin.

Member Bauer stated she previously worked in the NDOC as the Medical Administrator capacity she had no knowledge of the grievance other than reviewing it to prepare for EMC. She stated she didn't know the grievant or have any knowledge of the complaint.

Member Bauer stated she had no disclosure.

Chair Beigel asked Mr. Whitney if that was appropriate.

Mr. Whitney stated to Member Bauer if she were to proceed to hear grievance #7465 for Marquise Franklin, could she do so without judgement being materially affected for any reason.

Member Bauer responded yes, she could and would proceed as she has with the previous grievances heard that day for NDOC and remain neutral and not be materially impacted in any way.

Mr. Whitney stated he was good with that to move forward.

Chair Beigel asked the committee to discuss the grievance.

Member Russell stated she was inclined to move the grievance forward to hearing to get all the information to make a summary decision on.

Member Thompson stated she agreed with Member Russell, the EMC needed more information to base a decision on, and it should move forward to hearing.

Member Bauer stated she agreed with the committee members that they did not have enough information.

Member Bauer stated she understood in reviewing the grievance the complaint was how range was being conducted. This was inherently the Agency's right to run as they see fit.

Member Bauer stated she was unsure if the grievance was moved to hearing what we could offer as a remedy if we heard more information in a hearing.

Member Bauer stated she didn't think they could grant or deny based on further information presented at hearing.

Chair Beigel stated her thoughts where it was similar to the grievance they had just heard prior to remove the shotguns and the grievants felt inherently unsafe.

Chair Beigel stated this grievance was the grievant did not think other coworkers had the knowledge and training to make them safer.

Chair Beigel stated that is why she thought it should go to hearing.

Member Bauer stated if the committee did hear the grievance, the committee could not offer remedy to the grievant but could a recommendation to the governor based on heard testimony as a recommendation.

Chair Beigel stated she agreed with Member Bauer.

Member Bauer stated she agreed with Chair Beigel and it would be beneficial to hear in a full hearing.

Member Russell stated she moved to grant grievance #7465 for Marquise Franklin forward to hearing.

Member Russell asked Mr. Whitney if that was an appropriate motion.

Mr. Whitney responded it was.

Member Thompson seconded the motion.

Chair Beigel asked if the committee had additional discussion before they voted.

Chair Beigel heard none and called for a vote.

MOTION: Moved to grant grievance #7465 to full hearing.
BY: Member Russell
SECOND: Member Thompson
VOTE: The vote was unanimous in favor of the motion.

7. Discussion and possible action related to Grievance of Teresa McCastle #6918, Department of Corrections – Action Item

The EMC deliberated on the grievance.

Chair Beigel stated that she was inclined to dismiss the grievance.

Member Bauer stated that she was inclined to do the same thing, as there was past precedent for the EMC dismissing grievances when a grievant failed to appear.

Member Bauer posited that if a grievant was not invested enough to appear at his or her grievance hearing, was it a good use of the EMC's time to deliberate on such a grievance.

Member Thompson agreed with Member Bauer, and Member Russell agreed with dismissing the grievance.

Member Russell motioned to deny Grievance #6918 pursuant to NAC 284.695 and NAC 284.6955, as neither grievant nor an agency representative appeared for the hearing.

Member Thompson seconded the motion.

The motion carried unanimously.

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, the briefs, evidence, and 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 a non-exempt State of Nevada employee.
2. Grievant was employed by NDOC as a correctional officer on November 15, 2019.
3. Grievant worked at the Casa Grande NDOC facility in Las Vegas, NV.
4. Both the Grievant and the Agency NDOC failed to appear at Grievant's hearing on April 22, 2021, despite being emailed by EMC staff during the actual EMC meeting held on April 22, 2021.

CONCLUSIONS OF LAW

1. 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).

2. NAC 284.695(1) states:

Submission of grievance to Employee-Management Committee. (NRS 284.065, 284.155, 284.340, 284.384) If an employee is not satisfied with the decision rendered by the highest administrator in the department pursuant to NAC 284.690, the employee may request consideration of the grievance by the Committee pursuant to its rules. The employee must submit the request to the Committee within 10 working days following his or her receipt of the decision from the highest administrator. The request must include all appropriate documentation, a citation of the statutes and regulations pertinent to the grievance, if any, the specific points of disagreement or contention and supporting evidence.

1. Answer the request without a hearing if the case is based upon the Committee's previous decisions or does not fall within its jurisdiction;

3. The EMC in the past has dismissed grievances based on a grievant's failure to appear at the grievant's hearing (for example, James Gaida, Grievance No. 6757).

MOTION: Moved to deny Grievance #6918 pursuant to NAC 284.695 and NAC 284.6955, as neither grievant nor an agency representative appeared for the hearing.

BY: Member Russell

SECOND: Member Thompson

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

8. Public Comment

Chair Beigel heard none.

9. Adjournment

Chair Beigel called the meeting adjourned at 12:32 pm.