



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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**Meeting Minutes of the Employee-Management Committee
Date: July 08, 2021**

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

Ms. Jennifer Bauer	X
Ms. Mary Jo Scott	
Ms. Kathryn Ostrowsky	
Ms. Mechelle Merrill	X
Ms. Christina Leathers	
Ms. Sandie Geyer	

Employee Representatives

Ms. Turessa Russell	X
Ms. Sherri Thompson	
Ms. Stephanie Parker	
Mr. Gwyn Davies	X
Ms. Sonja Whitten	
Mr. Tracy DuPree	

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

Co-Vice-Chair Davies called the meeting to order at approximately 9:02 am.

2. Public Comment

Co-Vice-Chair Davies opened the meeting by asking for any public comment.

In the North: Mande Bowsmith, Deputy Administrator introduced herself and the support staff of the Labor Relations Unit; Mande Bowsmith, Anita Sommers, Matthew Lee, and Charity Clarke. She stated they were there as support.

In the South none were heard.

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

4. Adoption of the Agenda – Action Item

Co-Vice-Chair Davies requested a motion to approve the agenda.

MOTION: Moved to approve agenda.

BY: Member Bauer

SECOND: Member Merrill

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

5. Discussion and possible action related to Grievance #7366, Francis Appah, Department of Health and Human Services – Action Item

Mr. Todd Leventhal who was representing Mr. Francis Appah stated to the Committee that he had to appear in Federal Court at 11 am, and he asked if he could be excused at 10:30 am and he would return as soon as his hearing was complete.

Co-Vice-Chair Davies stated he didn't have an issue with either starting the presentation for the grievance, he did state he wanted to see what the Agency DAG thought of the special circumstance.

The Agency Dag Ms. Charity Felts stated they were there at the hearing, ready to present the grievance. She understood Mr. Leventhal had to leave but the Agency wanted to have the grievance heard and decided.

Co-Vice-Chair Davies responded the Committee would start to hear the Grievance presentation and continue it to his return. The Committee would go on to the other Grievances and when he returns the Committee will continue to hear the remainder of the grievance.

6. Discussion and possible action related to Grievance #7604, Jonathan Allen-Ricksecker, Department of Corrections – Action Item

Co-Vice-Chair Davies asked the Committee to start the discussion.

Member Russell stated what she had reviewed in the Grievance is the Committee was deciding to grant the Grievance and it would move to be scheduled for hearing or deny the Grievance as the Committee didn't have jurisdiction.

Member Russell continued to state the Committee has heard a case like this Grievance before, she cited the EMC Decision for Grievance #5754 Prost, which referred to the pre-shift and post-shift pay. She continued that she believed this Grievance #7604 for Allen-Ricksecker was the same as the Prost Decision.

Member Russell stated that the Agency is sending this Decision to District Court, so it has not been overturned at that point.

Member Russell stated she thought that this Grievance should be moved to hear. She stated the Committee has made previous decisions based on the Prost Grievance, until it is overturned in the District Court, they can grant the Grievance based on that.

Member Bauer stated she was struggling with deciding this Grievance as it is similar, but it has some differences that need to be noted.

Member Bauer stated she was on the Committee and heard the Prost, and the subsequent Committee that also had heard the Grievances of Butler, and Jones, they were Nurses at Institutions as part of Department of Corrections.

Member Bauer stated with the Grievance the Committee was deciding on he was a Correctional Officer; the referenced Grievances were from Nurses at the facilities.

Member Bauer continued the decisions the Committee heard previously were slightly different due to the compensatory activities between the Nurses and the Correctional Officers at the facilities.

Member Bauer continued she didn't feel comfortable answering the Grievance without a hearing, as she felt the matters listed in Grievance #7604 was entirely similar to the Decisions mentioned by the Committee's previous decisions.

Member Merrill stated she was new to the Committee and didn't have the history of the previous decisions, she felt it needed to be heard.

Member Russell stated taking into consideration of the other Committee Members she agreed it should be moved forward to hearing.

Member Russell continued if there were no objections, she would motion to move Grievance #7604 forward to hearing.

Co-Vice-Chair Davies stated the motion was moved by Member Russell, he asked who would second the motion.

Member Bauer stated she seconded the motion.

MOTION: Moved Grievance #7604 forward to hearing.

BY: Member Russell

SECOND: Member Bauer

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

7. Discussion and possible action related to Grievance #7523, Stephany Butler, Department of Corrections – Action Item

Co-Vice-Chair Davies asked the Committee to start the discussion.

Member Bauer stated when reviewing this Grievance there were serious allegations under EEO, she continued that she didn't think it was the appropriate venue for the Grievance. She stated she didn't think the EMC had jurisdiction to offer a remedy.

Member Merrill stated she agreed with Member Bauer, the Grievant listed serious allegations and is seeking the remedy of restitution of pay or a change in pay for medical appointments.

Member Merrill continued the bigger issue was the EEO issues of discrimination, which she felt the Committee didn't have jurisdiction to offer the Grievant.

Member Russell stated she agreed with the Committee Members.

Co-Vice-Chair Davies stated when he reviewed the Grievance, he noted to himself EEO. He stated this is not for this Committee to offer a remedy for this Grievance. He continued that the Grievance should be directed to the appropriate venue to seek remedy for this Grievance.

Co-Vice-Chair Davies asked the Committee for a motion.

Member Bauer stated she moved to answer Grievance #7523 for Stephany Butler without a hearing based on jurisdiction and she moved to advise the Grievant that they may seek remedy at the proper venue which would be the EEO.

Member Russell seconded the motion.

MOTION: Moved to answer Grievance #7523 without a hearing.
BY: Member Bauer
SECOND: Member Russell
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Grievance #7622, Debra Boone-Sharp, Department of Corrections – Action Item

Co-Vice-Chair Davies asked the Committee to start the discussion.

Member Russell stated when she reviewed the Grievance, she wanted to move it to be heard so they can get the details needed to see if the Committee can grant a remedy.

Member Merrill stated she agreed with Member Russell, it should be heard.

Member Bauer stated she agreed with the Committee Members and thought this Grievance needed to be heard by the Committee. The application for Administrative Leave during Covid has been a challenge.

Member Bauer stated there was not been a similar case the Committee has heard on this subject that she recalled.

Member Bauer continued; she thought the Committee did have the jurisdiction to review the case.

Member Bauer concluded, she didn't think the precedence had been set for similar Grievances, and her recommendation was to hear the Grievance.

Co-Vice-Chair Davies stated his thoughts were the same, after hearing the discussion from the Committee, he agrees it should be moved to heard.

Member Bauer stated if this Grievance is heard it may be helpful if the Chair of the hearing would request a subpoena for a Subject Matter Expert from Payroll to attend.

Member Bauer, continued as the only ASO on the Committee if she sits to hear this Grievance, a SME from Payroll would be needed to confirm the Policy during Covid Pandemic.

Member Russell stated she agreed with Member Bauer that a SME would be needed if the motion passes.

Co-Vice-Chair Davies asked the Committee for a motion with a request for Technical Expertise from Payroll.

Co-Vice-Chair Davies asked the Committee how that process worked if NDOC would provide the SME for the hearing or would it be a Payroll Person from DHRM.

Member Bauer responded in the past, the neutral subject matter expert has been someone from Central Payroll of the State Division of Human Resource Management. She recommended that would be the best course to take to remain consistent.

Ms. Flores stated she would note the request from the Committee and when the scheduling orders are sent out, a request for subpoena will be requested through the Chair or Co-Vice-Chairs. The Subject Matter Expert will be from DHRM Central Payroll.

Member Russell motioned to move Grievance #7622 for Debra Boone-Sharp forward for hearing.

Member Bauer seconded the motion.

MOTION: Moved Grievance #7622 forward to hearing.

BY: Member Russell

SECOND: Member Bauer

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

9. Discussion and possible action related to Grievance #7767, Richard Adams, Department of Corrections – Action Item

Co-Vice-Chair Davies asked the Committee to start the discussion.

Member Merrill stated she was still new to the Committee however felt she wanted this to be heard. She stated the contents of the Grievance seemed to affect more than just one person.

Member Merrill continued she was unsure if similar Grievances were heard and determined in the past, but she felt it needed to be heard to get the details she questioned on it when she had reviewed it.

Member Russell stated she agreed to move the Grievance forward to hearing. She wanted to make sure there would be no issues that stood out to them that would show they didn't have jurisdiction before it was voted on.

Co-Vice-Chair Davies stated it was in the jurisdiction to hear this Grievance. He noted one of the responses to the Grievant mentioned the EEO, he didn't think the EEO would be the appropriate venue and the EMC would be the correct venue.

Member Bauer stated she had several issues of concern with the review of the Grievance.

Member Bauer continued that there were so few similarities to compare this with. She noted she agreed with the Committee Members and the Grievance should be heard.

Member Merrill motioned to move Grievance #7767 for Richard Adams to be moved forward for hearing.

Member Bauer seconded the motion.

MOTION: Moved Grievance #7767 forward to hearing.
BY: Member Merrill
SECOND: Member Bauer
VOTE: The vote was unanimous in favor of the motion.

10. Discussion and possible action related to Grievance #7366, Francis Appah, Department of Health and Human Services Hearing Resumed – Action Item

This matter was heard before the Employee-Management Committee (EMC) on July 8, 2021.¹ Mr. Francis Appah (Employee or Mr. Appah) was present and was represented by Todd Leventhal Esq. of Leventhal & Associated, PLLC. Annette Altman, Personnel Analyst, Northern Nevada Adult Mental Health (NNAMHS) was present on behalf of the employer-agency, Department of Health and Human Services, which was represented at the hearing by Deputy Attorney General Charity Felts.

The Employer initially raised evidentiary objections to all references to discrimination in the employee's exhibits as beyond the scope of the grievance. The Employee argued that the basis of the grievance is that the written reprimand being challenged was issued because of discrimination, thus it is relevant to the grievance. The Employer's relevance objection was overruled. The Employer further objected to evidence submitted by the Employee from other employee's personnel files, where names and other confidential information was visible despite some attempts at redaction. The Employee argued that the redaction was adequate. The Employer's evidentiary objection was sustained and all proposed exhibits with confidential information were removed from Employee's submission. The remaining exhibits from the Employee and the Employer submitted to the EMC prior to the hearing were marked and admitted into evidence without objection.

Southern Nevada Adult Mental Health Services (SNAMHS) Human Resources Officer Jackie Arellano, Stein Forensic Hospital Clinical

¹ The EMC members present at the July 8, 2021 hearing representing a quorum were as follows: Vice-Chairman Gwyn Davies (DMV), Turessa Russell (UNLV), Jennifer Bauer (SPCSA) and Mechelle Merrill (Vocational Rehab). Counsel for the EMC, Chief Deputy Attorney General Greg Ott, was also present.

Program Manager Stanley Cornell, and Mr. Appah, a Forensic Specialist were duly sworn as witnesses and testified at the hearing.

STATEMENT OF THE CASE

The Grievant Francis Appah is employed by the Department of Health and Human Services (Employer) as a Forensic Specialist 4 at the Stein Forensic Hospital. On January 30, 2020, Mr. Appah reported to work after being called in on his day off. After some period of work Mr. Appah left the Stein Forensic Hospital (Stein) for one hour and 11 minutes.

The Stein is a secure facility, and all individuals are required to sign in and out of the building. Mr. Appah signed into the facility at the beginning of his shift and out at the end of his shift but did not sign out when he left the facility for the 1 hour and 11-minute period and did not sign back in upon his return.

Mr. Appah was experiencing a medical episode and left Stein in an effort to manage his medical needs. During the investigation into the January 30, 2020 incident, two other Stein employees with information relevant to the case received text messages from Mr. Appah. Neither employee had given Mr. Appah their personal cell phone numbers and reported the incidents to human resources.

An investigatory interview was scheduled with Mr. Appah, his counsel on February 28, 2020.

The interview was then moved to March 4, 2020 to accommodate Mr. Appah's counsel.

At the March 4 meeting, Mr. Appah's counsel stopped the interview because he believed the investigator was being antagonistic and unfair to Mr. Appah. Attempts were made by investigators to reschedule the interview on March 12, March 16, March 18, and March 23 of 2020 but Mr. Appah's counsel was unavailable. Additional attempts were made to reschedule and conclude the interview on April 20, 22, or 24 of 2020 or another date of Mr. Appah's counsel's suggestion, but a second interview was never completed.

The investigation was completed without a second interview of Mr. Appah. The charges that he we took unauthorized absence without leave, violated agency policy and security protocols, violated confidentiality directives were substantiated. The investigation also concluded that Mr. Appah failed to fully participate in the administrative investigation.

Mr. Appah was issued a written reprimand on July 2, 2020. He submitted a grievance on July 27, 2020, alleging that the written reprimand should be reduced to a letter of instruction and that the discipline was racially motivated and retaliatory as others had committed worse acts and not

received similar punishments, and his medical episode and past good performance merited a reduction to a Letter of Instruction.

DECISION

The employee bringing a case before the EMC bears the burden of convincing the EMC to adjust the grievance. Absent a successful motion to adjust a grievance, the employer's conduct that was the basis of the grievance remains intact. Three motions were made at the conclusion of the EMC's deliberations.² All motions failed, and the EMC did not take action to adjust the grievance. Thus, by operation of law, the employer's decision remains unchanged by the hearing.

11. Public Comment

No public comment in the North.

Mr. Appah who was located in the South stated he wanted to comment that he didn't agree with the lies that were stated about him. He felt he didn't get to present the evidence due to confidentiality, and he understood that. He continued, he felt his career with the Agency and his more than 40 employees, has shown in his evidence not everyone signed in and out of the book, and only he is held accountable for that.

Mr. Appah stated the judgment given to him was not fair.

13. Adjournment

Co-Vice-Chair Davies adjourned the meeting at approximately 4:34 pm.

Member Bauer moved to deny the grievance based on failure to maintain confidentiality and failure to participate in the investigation but noted that the neglect of duty charge would not be substantiated. Member Russell then moved to grant the grievance and remove absent without leave from the reprimand. Member Davies the moved to uphold the grievance that the written reprimand be removed.