



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
January 12, 2017

Held at the Blasdel Building, 209 E. Musser St., Room 105, 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. Mandy Hagler–Chair	X
Ms. Pauline Beigel	
Mr. Guy Puglisi	X
Ms. Claudia Stieber	
Ms. Allison Wall–Co-Vice-Chair	
Ms. Michelle Weyland	
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	
Ms. Donya Deleon	X
Mr. Tracy DuPree	
Mr. David Flickinger	
Ms. Turessa Russell	X
Ms. Sherri Thompson	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator
Ms. Jocelyn Zepeda, Hearing Clerk

- 1. Chair Mandy Hagler:** Called the meeting to order at approximately 9:00 a.m.
- 2. Public Comment**

There were no comments from the audience or Committee Members.

3. Adoption of the Agenda – Action Item

Chair Hagler requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.
BY: Committee Member Turessa Russell
SECOND: Committee Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

4. Approval of Minutes for November 17, 2016 – Action Item

Chair Hagler requested a motion to adopt the minutes.

MOTION: Moved to approve the minutes.
BY: Committee Member Donya Deleon
SECOND: Committee Member Guy Puglisi
VOTE: The vote was unanimous in favor of the motion.

5. Discussion and possible action related to Motion to Dismiss Grievance #3831 of Tanya Hill, Department of Corrections – Action Item

Chair Hagler opened the hearing on grievance #3831 filed by Tanya Hill (“Ms. Hill” or “Grievant”). Grievant represented herself, and the State of Nevada, Department of Corrections (“NDOC”) was represented by Jennifer Hostetler (“Ms. Hostetler”).

Ms. Hostetler informed the Committee in substance that Associate Warden Hill’s grievance should be dismissed because the Committee did not have jurisdiction over the subject matter of the grievances and because the Committee had no authority to provide the requested relief in the grievances. Ms. Hostetler stated in substance that in Grievance # 3831 Associate Warden Hill requested the following relief: 1) to remove the June 2015 letter of instruction (“LOI”) and performance card documentation from her file, 2) for alleged retaliation against her to stop, 3) for alleged targeting and harassment to stop, 4) for statements about her alleged lack of participation in Employee Appreciation Week to be retracted, and lastly, for Warden Gentry and NDOC Human Resources to meet with her to discuss her concerns.

Ms. Hostetler also stated in substance that Grievance # 3831 arose from a June 5, 2015 meeting that Warden Gentry had with Associate Warden Hill to discuss a number of topics, including issues which Associate Warden Hill had previously raised with Warden Gentry in a May 4, 2015 letter to Warden Gentry. Ms. Hostetler informed the Committee in substance that in the meeting Warden Gentry addressed the concerns which Associate Warden Hill had raised, explained the difference between corrective action and disciplinary action, and that Warden Gentry had also presented an LOI regarding recent instances of neglect of duty by Associate Warden Hill.

Ms. Hostetler argued in substance that the Committee lacked jurisdiction to review an LOI or performance card entry. Ms. Hostetler further argued in

substance that an LOI was a tool which helped management communicate expectations for employee performance and behavior before it was necessary to pursue any progressive discipline. Ms. Hostetler also noted in substance that similarly, pursuant to NDOC Administrative Regulation 343, a performance card documented verbal counseling, was not any sort of disciplinary document, and that neither an LOI nor the performance card are stored in an employee's personnel file. Ms. Hostetler added in substance that the Committee had previously determined that an LOI could not be grieved.

Ms. Hostetler also argued in substance that the Committee lacked jurisdiction to address retaliation and harassment based upon race, and that the Committee was not the proper venue to address those issues, and that this fact was noted online in the Frequently Asked Question section on the Department of Administration, Human Resource Management website.

Additionally, Ms. Hostetler stated in substance, with respect to Warden Gentry's statement to Associate Warden Hill about her participation during Employee Appreciation Week, whether Associate Warden Hill displayed a lack of participation in activities was within the authority and discretion of NDOC and/or Warden Gentry to determine, and that under NRS 284.020 NDOC had the authority to conduct and manage its affairs as it saw fit. Ms. Hostetler added in substance that it appeared Warden Gentry only made the statement about the lack of participation in Employee Appreciation Week during her verbal counseling of Associate Warden Hill, and not to anyone else at NDOC, and that there was no authority for the Committee to make Warden Gentry retract her statement. Ms. Hostetler also noted in substance that Associate Warden Hill had been offered mediation in the Step Three Response by NDOC. Also, Ms. Hostetler added in substance that Associate Warden Hill no longer worked at Florence McClure Women's Correctional Center and no longer worked with Warden Gentry.

MOTION: Moved to grant NDOC's Motion to Dismiss based on NAC 284.658 excluding from the definition of grievances actions where a hearing would be provided for under Federal law, and also based on the fact that the Committee has previously concluded that it has no jurisdiction over LOIs that are not of a disciplinary nature.

BY: Committee Member Guy Puglisi

SECOND: Committee Member Donya Deleon

VOTE: The motion passed unanimously.

6. Discussion and possible action related to Motion to Dismiss Grievance #3970 of Tanya Hill, Department of Corrections – Action Item

Chair Hagler opened the hearing on grievance #3970 filed by Tanya Hill ("Ms. Hill" or "Grievant"). Grievant represented herself, and the State of Nevada, Department of Corrections ("NDOC") was represented by Jennifer Hostetler ("Ms. Hostetler").

Ms. Hostetler said in substance that the grievance involved an e-mail Associate Warden Hill received from Warden Gentry addressing her authorization of Associate Warden Hill's administrative assistant to adjust her regular days off without prior approval from Warden Gentry. Ms. Hostetler also noted in substance that Associate Warden Hill took exception to the fact that Warden Gentry told her that she was expected to be the backup to her administrative assistant.

Ms. Hostetler informed the Committee that as relief requested in her grievance, Associate Warden Hill asked that the administrative staff be cross-trained to support each other during absences, that she be provided an explanation as to why she was required to seek approval to adjust her administrative assistant's schedule, and finally, to have Warden Gentry acknowledge that her behavior was designed to target, intimidate, bully and harass her, causing a hostile work environment. Ms. Hostetler added in substance that Associate Warden Hill requested documentation to support the reason why she was required to seek approval to adjust her administrative assistant's schedule.

Ms. Hostetler argued in substance that the Committee lacked jurisdiction to alter the schedule for NDOC administrative assistants or to say who was designated as backups at NDOC. Ms. Hostetler added in substance that a great deal of discretion was given to NDOC as the appointing authority to manage its day to day operations, and that NDOC regularly made staffing decisions, as it was entitled to do, which included who was the back up to administrative assistants. Ms. Hostetler noted in substance that the decision to have Associate Warden Hill be the back up to her administrative assistant did not violate any regulations, statutes, or policy. Ms. Hostetler also noted in substance that this part of Associate Warden Hill's grievance might not be timely.

With respect to Associate Warden Hill's request for an explanation as to why she was required to seek prior approval to adjust her administrative assistant's schedule, Ms. Hostetler argued in substance that an explanation was provided to Associate Warden Hill during the grievance process, and that therefore this request was moot. Finally, with respect to Associate Warden Hill's request as it related to retaliation and harassment, Ms. Hostetler argued in substance that this part of the grievance was not properly before the Committee, and that the Committee had no statutory authority to hear grievances involving such allegations. Ms. Hostetler added in substance that it was her understanding that Associate Warden Hill's allegations of harassment and retaliation had been investigated by the State of Nevada, Division of Human Resource Management, and that once again NDOC did not violate any statute, regulation or policy, and that Associate Warden Hill's grievance should be dismissed.

Associate Warden Hill addressed Grievance # 3831 first. Associate Warden Hill stated in substance that she had been with NDOC since January 2005, and had started with NDOC as a correctional officer, and had worked her way up to her current position. Associate Warden Hill also stated in substance that it was "grossly understated" that the issue in Grievance # 3831 was about an LOI, and that it was stated in her grievance that it was the spirit of retaliation under which Warden Gentry issued the LOI which was her concern. Associate Warden Hill

also stated in substance that there was a focus on retaliation from the perspective of racial and gender bias, but that was not the sole basis for which her grievance was before the Committee. Associate Warden Hill argued in substance that not only did Warden Gentry retaliate against her because she did not like what Associate Warden Hill put in a letter to her, she retaliated against her for no good reason.

Associate Warden Hill stated in substance that she addressed Warden Gentry on May 4, 2015 with concerns that she had, that she expressed these concerns in a letter, which Warden Gentry did not like, and that the retaliation was clearly documented in her conversation with Warden Gentry on June 5, 2015, when Warden Gentry had said "I had to handle the meeting this way because of who you are, and that I felt I needed to cover my butt because you went to Casa Grande and sent a copy of your letter to your personnel file." Therefore, Associate Warden Hill argued in substance, the LOI was not issued for corrective actions purposes, but was issued for Warden Gentry to cover herself.

Associate Warden Hill stated in substance that, as reasonable people, the Committee members could put themselves in her position and consider her situation. On May 4, a highly critical and condemning letter was presented to your supervisor, expressing concerns about your current working environment, and on June 5, you met with your supervisor to discuss your concerns, only to walk into an office staged to demean and belittle you from the outset, then given an LOI, and barraged with comments that they had to respond that way because of your personality and because they had to cover themselves. Then on July 6, 2015, you submitted a grievance because you felt the actions taken on June 5 were retaliatory and hostile, and then on July 9, you were placed under investigation. Then on August 24, you received an e-mail advising you that you were unable to adjust your administrative assistant's schedule without prior approval. Then three days after that your supervisor advised all other department heads that they had a different standard than you. Then on September 24 you filed a second grievance, and in less than a month after that you returned to work from a week long absence to discover rumors you were fired for embezzlement. Then on September 27 you filed Step Two of your grievance, and then the day after you are placed under investigation for another false claim.

Associate Warden Hill argued in substance that the harassment and retaliation was directly related to her expressing concerns about her working environment, and that as she filed grievances Warden Gentry continued to surreptitiously harass her through her actions. Associate Warden Hill stated in substance that if you applied a reasonable person standard and looked at the fact that she had come to Warden Gentry with her concerns, that Warden Gentry began to harass her by issuing her an LOI, then coming after her with the issue about her administrative assistant's schedule, she argued that a reasonable person would conclude that such action was a form of retaliation and harassment, whether based in gender or race or not. Associate Warden Hill stated in substance that it was Warden Gentry's duty to treat all employees fairly, despite an employee's thoughts or feeling for her, and that she was aware that her letter to Warden Gentry would provoke some feelings, but that her concerns still needed to be addressed.

Associate Warden Hill stated in substance that with regard to violations of policy, law or otherwise, she had cited repeated violations of policy that had not been addressed. Associate Warden Hill said that the violations were: AR 343.04(2), because Warden Gentry had failed to apply less severe measures; AR 343.06(2)(A)(1), because Warden Gentry failed to document instances of verbal counseling to include the date of counseling and expected results; AR 343.06(2)(B)(2) because Warden Gentry failed to participate in any level of dialogue with her pertaining to any of these alleged concerns; AR 343.06(2)(B)(8), because Warden Gentry failed to identify what she would do to assist in her success in resolving the alleged deficiencies; AR 343.06(2)(B)(5), because Warden Gentry failed to issue the LOI in a timely manner; AR 343.06(2)(B)(9), because the tenor of the June 5, 2015 meeting with Warden Gentry was replete with threats of further discipline; AR 306.02(3)(B), because Warden Gentry had not met to discuss a resolution of her grievance; AR 339.05(15), preferential treatment of subordinates; AR 339.05(18)(g), misuse or abuse of supervisory authority; AR 339.05(18)(q), retaliation against another employee for reporting a complaint of misconduct; AR 339.05(18)(n), disgraceful personal conduct that impairs the performance of a job or causes discredit to the agency; AR 339.05(9)(a), knowingly providing false and misleading statements, either verbally or in written reports or other documents concerning actions related to the performance of official duties; AR 339.05(9), knowingly providing false or misleading statements to a supervisor, and the State of Nevada Employee Handbook.

Associate Warden Hill said in substance that the mediation offered to her was a “joke,” and she stated in substance that she had requested a meeting with Warden Gentry and Sharlet Gabriel of NDOC Human Resources at every step of her grievance process. Associate Warden Hill added in substance that at no point was that request ever addressed by any of the responses to her grievance, and that this was a communication issue which should have been addressed by the employee and supervisor, with the help of Human Resources if necessary.

Associate Warden Hill stated in substance that in Grievance #3970, it was suggested that explanations were provided to her in the grievance process, and that she disagreed with this, and that most importantly, the questions she had asked were rhetorical. Associate Warden Hill added in substance that she was aware that she had the authority to do what she had done, and her questions were made to point out the fact that Warden Gentry had acted the way she had because she was offended that Associate Warden Hill had spoken out against her behavior. Associate Warden Hill noted in substance that the point of Grievance #3970 was to highlight that she had been targeted by Warden Hill, that she was oppressive, and had harassed her and violated statutes and the AR’s she had pointed out.

Associate Warden Hill argued in substance that as far as the resolutions proposed she understood that the Committee was limited in the types of resolutions it could provide, but that her proposed resolutions fell within the realm of enforcing application of policy, procedure or regulation. Associate Warden Hill argued that the issue had been exacerbated by NDOC’s failure to enforce the

policies she noted, in deference to protecting Warden Gentry. For those reasons, Associate Warden Hill stated in substance, her grievance should continue and the motion to dismiss be denied for both grievances.

The Committee deliberated on the motions after hearing oral argument. Member Puglisi stated in substance that he saw the words retaliation, intimidation and harassment appear in the exhibits several times, and that anything related to those allegations would be the jurisdiction of the EEOC or NERC, so he was wondering if it would not be proper to limit the scope of what the Committee was considering because he was unaware of the history of any investigation of the allegations, and that the Committee should wait for any investigation to conclude. Chair Hagler stated in substance that investigations had taken place and were concluded. Chair Hagler also stated in substance that there were prior decisions stating that the Committee could not hear anything dealing with harassment or retaliation, and could not force an employee to apologize. Chair Hagler added in substance that the issue was whether the LOI was deemed to be in the disciplinary process, and that would be the only time the Committee could even consider having a hearing on an LOI, and that nowhere in the LOI in this case did it say there would be further discipline.

Member Puglisi also stated in substance that he did not feel that NDOC followed its own regulations, regardless of what the regulations related to. Chair Hagler stated in substance that what Associate Warden Hill wanted was to remove the LOI, and that the Committee had no authority over that. Member Russell stated in substance that going back to the AR 343(b)(8), that an LOI should say what the supervisor will do to assist the employee in being successful, and that she did not see this in the letter. Chair Hagler added in substance that the Committee had an Attorney General Opinion saying the Committee could not hear LOIs. Member Deleon stated in substance that she was in agreement with Member Puglisi, but if the Committee could not hear the grievance then it could not do so. Member Puglisi added in substance that he wondered if the grievances were a moot point, since Associate Warden Hill was now under a different supervisor. Chair Hagler commented in substance that the LOI was not part of an employee's service jacket.

MOTION: Moved to grant NDOC's Motion to Dismiss based on NAC 284.658 excluding the Committee from hearing a matter where a hearing was provided for by Federal law, and whereas the agency directives may appear unreasonable to the Grievant, they are well within the authority of the agency's administration.

BY: Committee Member Guy Puglisi

SECOND: Committee Donya Deleon

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

7. Discussion and possible action related to Grievance #4484 of Nancy Linder, Department of Health and Human Services, Division of Public and Behavioral Health – Action Item

Chair Hagler opened the discussion on Grievance #4484 of Nancy Linder ("Grievant" or "Ms. Linder").

Member Guy Puglisi noted that the Division of Public and Behavioral Health was in support of Ms. Linder's request.

Member Turessa Russell stated that she did not see any way that the Committee could grant the grievance.

Member Guy Puglisi stated that the statute provides for a request for inequitable pay, as cited in the grievance, but that it is permissive, rather than mandatory.

Member Turessa Russell also stated that the Committee had heard grievances from other agencies previously, and the Committee was unable to grant it at that time as well.

Chair Hagler stated that it is the Division of Human Resource Management is the entity that would grant such a request, rather than the agency.

Member Turessa Russell asked if the Committee heard the grievance, would there be any remedy they could provide.

Chair Hagler responded that the Committee does not have the authority to instruct the Division of Human Resource Management to create funding, and the Committee cannot place a financial burden on agencies through its decisions.

Chair Hagler stated that NAC 284.204 is permissive, and does not require that the agency answers Grievant's request.

MOTION: Moved to answer Grievance #4484 without a hearing because the Committee does not have jurisdiction over an agency's budget or the Division of Human Resource Management.

BY: Committee Member Turessa Russell

SECOND: Committee Member

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

8. Public Comment

There were no comments from the audience or Committee Members.

9. Adjournment