



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
October 23, 2014

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

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	X
Ms. Mandy Payette–Co-Vice-Chair	
Ms. Bonnie Long	
Ms. Claudia Stieber	
Ms. Allison Wall	
Ms. Michelle Weyland	X
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	X
Ms. Donya Deleon	X
Mr. Tracy DuPree	
Mr. David Flickinger	
Ms. Turessa Russell	
Ms. Sherri Thompson	

Staff Present:

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

- 1. Chair Mark Evans:** Called the meeting to order at approximately 1:30 p.m.

2. Public Comment

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

3. Adoption of the Agenda – Action Item

Chair Evans requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.

BY: Committee Member Michelle Weyland

SECOND: Committee Member Donya Deleon

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

4. Discussion and possible action related to motion to dismiss of Grievance of Robert Ely, submitted by the Department of Public Safety, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC” or “Committee”) by the agency employer Department of Public Safety (“DPS”) which was represented by Deputy Attorney General Charles Mackey (“Mr. Mackey”). Robert Ely (“Mr. Ely” or “Grievant”) was present and was represented by Robert Domico (“Mr. Domico”).

DPS argued that the Committee did not have jurisdiction to hear the grievance because Mr. Ely’s grievance had resulted in submission of an age discrimination complaint to the Division of Human Resource Management, and the results of the investigation were confidential; that Mr. Ely’s remaining allegations did not adequately allege that a statute or regulation had been violated; and that the EMC’s jurisdiction in personnel matters was limited to failure to follow a statute or regulation and that the EMC could not provide any of the requested remedies to Mr. Ely.

Grievant asserted that DPS was making promotional decisions based on nepotism, favoritism and pre-selection and other factors outside of those permissible by statute and regulation and desired the grievance to go forward.

The Committee reviewed the documents filed in the matter; considered the arguments of counsel, and the parties; and deliberated on the record. Co-Vice-Chair Canter noted that it had not limited itself to the requested remedies in past grievances. Chair Evans noted that Mr. Ely’s grievance was the second grievance from an employee regarding this particular hiring decision, and that previous recruitment disputes had resulted in EMC examination of regulations and impropriety in procedures utilized in the hiring process. Committee Member Weyland suggested hearing Mr. Ely’s case on the same date as the similar grievance from DPS so as to limit the inconvenience to any common witnesses. DPS objected to combining the two grievances, but did not object to hearing the grievances on the same date.

Chair Evans requested a motion.

MOTION: Moved to deny the motion to dismiss and further requested the case be heard on the same calendar day as Jaime Brown for the efficient use of common witnesses' time.
BY: Committee Member Michelle Weyland
SECOND: Committee Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

5. Discussion and possible action related to motion to dismiss of Grievance of Christine Moninghoff, submitted by the Department of Corrections, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee by the agency employer Department of Corrections (“NDOC”) which was represented by Deputy Attorney General Charles Mackey. Christine Moninghoff (“Dr. Moninghoff” or “Grievant”) was present in proper person.

NDOC argued that the EMC did not have jurisdiction to hear the grievance because Dr. Moninghoff’s grievance was not timely filed as she was hired in 2010 at her current pay level but failed to file a grievance until 2014, and that NAC 284.204 gives the appointing authority discretion to request a step increase for an employee.

Dr. Moninghoff asserted that her grievance was timely filed because it was within 20 days of her learning that other similarly situated employees were being paid more than she and that the issue of pay disparity was sufficient grounds to support her grievance. Dr. Moninghoff attempted to discuss details of the resolution conference discussions and NDOC’s objection to those comments was sustained and those comments were disregarded.

The Committee reviewed the documents filed in the matter; considered the argument of counsel, and the parties; and deliberated on the record. Committee Member Deleon stated she would like to see the NPD-4a and NPD-4b. Co-Vice-Chair Canter noted that the requested remedy in the grievance was equity in pay so the grievance was not solely related to the Grievant’s education and experience. Chair Evans noted that Dr. Moninghoff’s grievance was the second grievance from an employee regarding NDOC’s failure to compensate its psychologists at equal rates, but that any decision of the EMC with a fiscal impact on the state required the approval of the Budget Division of the Department of Administration and the Division of Human Resource Management.

Chair Evans requested a motion.

MOTION: Moved to deny the motion to dismiss. Each payday resets the clock to file a grievance and the Grievant addressed equity in her proposed resolution.
BY: Co-Vice-Chair Stephanie Canter
SECOND: Committee Member Michelle Weyland
VOTE: The vote was unanimous in favor of the motion.

6. Adjustment of Grievance of Michellane Mouton, #3248, Department of Corrections – Action Item

The agency employer Department of Corrections was represented by Deputy Attorney General Charles Mackey. Michellane Mouton (“Dr. Mouton” or “Grievant”) was present in proper person.

The exhibits submitted to the EMC prior to the hearing were marked. Neither party objected to any exhibit offered by the other side and all exhibits were submitted without objection. Expert Witness Personnel Analyst III Angelica Gonzalez from the Division of Human Resource Management (“DHRM”) and NDOC Personnel Officer II Brian Boughter were duly sworn and appeared at the hearing.

NDOC moved for dismissal of the grievance on the grounds that the Committee lacked jurisdiction to compel it to perform a discretionary act. Dr. Mouton stated she did not wish to respond.

The Committee deliberated on the record. Committee Member Deleon noted that the argument and scenario were the same as the previous case. Committee Member Weyland noted that she agreed they were the same.

Chair Evans requested a motion.

MOTION: Moved to deny the motion to dismiss.
BY: Committee Member Michelle Weyland
SECOND: Committee Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

Dr. Mouton stated she had been employed by NDOC and had worked as a Psychologist II since 2010. Grievant argued NDOC had improperly failed to increase her pay to equal the pay of subsequently hired employees who were hired at higher rates of pay. Dr. Mouton asserted that employees hired after her as Psychologist IIs were hired with master’s degrees at a step 10, while she was hired, and remained at, a step 1 despite her doctoral degree and post-doctoral experience. As her proposed resolution, Dr. Mouton requested that she be evaluated for a salary increase equal to those who had been hired after her with lesser experience.

NDOC’s position was that NAC 284.204 allowed all rate revisions to be at the discretion of the appointing authority and were not mandatory, thus the Grievant was not entitled to any increase.

Ms. Gonzalez responded to Committee questions stating that around the year 2010, a rate of pay could not be increased. She further testified that a new employee may be hired at a rate of pay higher than an existing employee if the new employee was more experienced or qualified than the existing employee. Additionally she testified that a request for an increase in pay was filed on a form known as a NPD-4. Ms. Gonzalez further testified that the adjustment of steps are at the discretion of the appointing authority and that all requests are

reviewed by DHRM and then by the Governor's Office. Brian Boughter testified on behalf of NDOC that he reviewed requests for accelerated rates of pay for positions and that a PhD was not required for Dr. Mouton's position. Committee Member Deleon stated that the agency seemed to be ok with accelerating new employees but not existing employees and asked Mr. Boughter if there was a reason for that. NDOC objected on the basis that the statement misstated Mr. Boughter's testimony. Chair Evans asked Mr. Boughter to restate his testimony. Mr. Boughter stated that he would not want to impinge on the person who approved fiscal aspects but that he would assert that since it was no longer the year 2010, there may be some wiggle room for the appointing authority to make a case of superior qualifications that may be considered. Co-Vice-Chair Canter asked what criteria would have been put forward and considered on a NPD-4 in the case that a candidate with education that was inferior to an existing employee of the same class title was hired at a rate of pay higher than the existing employee. NDOC objected to the question on the basis that it was hypothetical and that the record did not show that there was a disparity, what the individual's qualifications were, or what the selection criteria of the recruitment was. Chair Evans allowed the question and Mr. Boughter answered that the information put forward by the appointing authority identified enhancements to a candidate's education and experience. Ms. Gonzalez returned to the witness stand and in response to Committee questions stated that the NPD-4 form required supporting documentation of other employees with education and experience similar to the employee for whom the increase was being requested.

The Committee reviewed the evidence; considered the statements of the witnesses and the arguments of counsel, and the parties; and deliberated on the record. Co-Vice-Chair Canter noted that it did not have the NPD-4s of those hired subsequent to Dr. Mouton to analyze in their determination of whether she had been properly compensated. Committee Member Weyland noted that testimony indicated documentation was presented to DHRM prior to the approval of the pay rate of the subsequent hires. Chair Evans noted that it was at the discretion of the agency to make the request to accelerate the salary. Additionally he stated Dr. Mouton hadn't proven her case but that there was an upcoming case which may provide her an opportunity to revisit the matter.

Chair Evans requested a motion.

MOTION: Moved to deny because Dr. Mouton was unable to substantiate the agency violated their discretion in not submitting an NPD-4 acceleration.

BY: Co-Vice-Chair Stephanie Canter

SECOND: Committee Member Michelle Weyland

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

7. **Public Comment**

There were no comments from the audience or Committee members.

8. **Adjournment**

MOTION: Moved to adjourn.
BY: Co-Vice-Chair Stephanie Canter
SECOND: Committee Member Michelle Weyland
VOTE: The vote was unanimous in favor of the motion.