



**STATE OF NEVADA**  
**EMPLOYEE-MANAGEMENT COMMITTEE**  
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**Meeting Minutes of the Employee-Management Committee**  
**August 28, 2014**

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

**Committee Members:**

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

**Staff Present:**

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

- 1. Co-Vice-Chair Stephanie Canter:** Called the meeting to order at approximately 1:00 p.m.

**2. Public Comment**

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

**3. Adoption of the Agenda – Action Item**

Co-Vice-Chair Canter requested a motion to adopt the agenda.

**MOTION:** Moved to approve the adoption of the agenda.  
**BY:** Committee Member Sherri Thompson  
**SECOND:** Chair Mark Evans  
**VOTE:** The vote was unanimous in favor of the motion.

**4. Approval of Minutes for June 12, 2014 – Action Item**

Co-Vice-Chair Canter requested a motion to approve the minutes.

**MOTION:** Moved to approve the minutes.  
**BY:** Chair Mark Evans  
**SECOND:** Committee Member Sherri Thompson  
**VOTE:** The vote was unanimous in favor of the motion.

**5. Approval of Minutes for June 26, 2014 – Action Item**

Co-Vice-Chair Canter requested a motion to approve the minutes.

**MOTION:** Moved to approve the minutes.  
**BY:** Committee Member Allison Wall  
**SECOND:** Chair Mark Evans  
**VOTE:** The vote was unanimous in favor of the motion.

**6. Adjustment of Grievance of Joshua Perkins #3193, Department of Conservation and Natural Resources, Division of Forestry – Action Item**

Joshua Perkins (“Mr. Perkins”) was present and in proper person. The Nevada Department of Conservation and Natural Resources, Division of Forestry (“Forestry”) was represented by Deputy Attorney General Cameron Vandenberg and State Forester Pete Anderson. The exhibits submitted to the Employee-Management Committee (“EMC” or “Committee”) prior to the hearing were marked for entry. There were no objections to the exhibits. Mr. Perkins, Personnel Analyst II Teri Hack (“Ms. Hack”) and Division of Human Resource Management Payroll Manager Keyna Jones (“Ms. Jones”) were sworn in and testified at the hearing.

Mr. Perkins is a 24-hour firefighter stationed at Mt. Charleston who has been with Forestry for approximately two years. At the grievance hearing Mr. Perkins testified in substance that he was grieving policy and procedures and signed agreements, not overtime calculations, and he further stated that Forestry’s calculations for his overtime pay were incorrect. Mr. Perkins also stated in substance that he was instructed by Ms. Hack in a telephone conversation to, in

his opinion, lie on his timesheet and not show any overtime; he testified that he was told to instead flex his time because Ms. Hack felt that it was unfair for 56-hour workweek employees to be paid overtime. Mr. Perkins additionally testified in substance that he had not received inmate supervision training due to the overtime issue and because it took Ms. Hack three weeks to contact [Central] Payroll about his concerns about overtime he was to be paid, his grievance had not been resolved as soon as practicable.

Mr. Perkins testified in substance that he went to Carson City for a yearly meeting which was held April 23-25, 2014. Prior to attending the training Mr. Perkins submitted a request for 22 hours of overtime which was approved (Mr. Perkins only made a claim for 18.5 hours of overtime). During questioning, Mr. Perkins testified that he left his station at Mt. Charleston for Carson City at about 5:00 a.m. on Wednesday, April 23, 2014, a day on which he was on a 24-hour shift which ended at 8:00 a.m. the next day. He also testified that another firefighter covered the remainder of his shift while he was in Carson City.

Mr. Perkins further testified in substance that he did not understand why Forestry wanted him to flex his time, and that he had submitted his time sheet the same way last year when the “all hands” meeting was held, but that Forestry had not required him to flex his time last year. In response to questioning, Mr. Perkins testified that he was eventually not required to flex his time as a result of the present matter. Additionally, although Mr. Perkins testified in response to questions that he had not actually worked his full 24-hour shift from 8:00 a.m. April 23, 2014, until 8:00 a.m. April 24, 2014, he indicated that he could not locate anything in NRS or in his 24-hour firefighter agreement that allowed him to flex his schedule.

Furthermore, Mr. Perkins argued in substance that since NRS 284.180(b) said that overtime must be considered time worked in excess of a 53-hour average per week during one work period for those hours worked or on paid leave, that overtime was to be calculated per work week, not per a 27-day work period. Additionally, in response to questioning, Mr. Perkins testified that he received an adjustment to his paycheck every 28 days.

Forestry argued that pursuant to NRS 284.180, 24-hour firefighters are deemed to work 56 hours a week, and that any hours worked in excess of 53 hours were considered overtime. Therefore each pay period 24-hour firefighters have a base pay of 112 hours whether or not they work those hours. In this particular matter, Forestry argued, Mr. Perkins was apparently overpaid several hours of overtime due to the way Forestry initially calculated the overtime based on NRS 284.180, which was based on a “snapshot” of a one week work period, which was not how the statute had been applied in the past. In the past Forestry had determined the work period for calculating overtime to be 27 days, and Forestry makes an adjustment for overtime pay for 24-hour firefighters every 27 days. If a 27 day work period is considered, Forestry argued, then Mr. Perkins was entitled to only one hour of overtime pay because Mr. Perkins worked 213 hours during the relevant pay period, and when that amount was averaged out over 27 days the average workweek was 53.5 hours, and overtime is only paid to 24-hour firefighters after 53 hours.

Forestry stated that it was not asking the Committee to find that Mr. Perkins had been overpaid and that the overpayment be returned; instead, Forestry was arguing that Mr. Perkins was not entitled to any more money than he had already been paid, and consequently his grievance should be denied.

Ms. Hack testified in substance that the appointing authority (Forestry) determined that the work period for 24-hour firefighters referenced in NRS 284.180(4) was 27 days, and that this work period was determined prior to 2002. Ms. Hack further testified that 24-hour firefighters employed by Forestry are deemed to work 56 hours every week, and that every 27 days Forestry processed the Fair Labor Standards Act (“FLSA”) adjustment, which resulted in Forestry paying 24-hour firefighters an additional 6 hours of overtime, which was the difference between the 53 hours and 56 hours. Ms. Hack also testified that during the work period in question (April 7, 2014 – May 3, 2014) Mr. Perkins worked 213 hours, and that the average hours he worked each week was 53 and ¼ hours. However, she testified that Mr. Perkins was paid 20 hours of overtime for that work period: 14 hours of overtime he had claimed in addition to the 6 hours of overtime he was normally paid.

Ms. Hack, in response to questioning, further testified in substance that she noticed Mr. Perkin’s time sheet because, after going through all of the time sheet submitted by the firefighters at the “all hands” meeting, Mr. Perkins was the only one who claimed overtime for attending the meeting, and that some of the other firefighters worked the same shift as Mr. Perkins. Additionally, Ms. Hack stated that she did not tell Mr. Perkins to lie on his time sheet or flex any time, and that she had told him he needed to work his time sheet out so that when he showed his actual hours worked they could determine what overtime he had earned above and beyond what was required.

Additionally, Ms. Hack testified in substance that 24-hour firefighters are paid for 56 hours per week regardless of the hours worked, and that it is standard practice if a 24-hour firefighter altered his or her shift during a week, to consider that week as actual hours worked. In Mr. Perkins’ case he was in Carson City and he did not work his scheduled shifts from 5:00 a.m. Wednesday, April 23, 2014, to 8:00 a.m. Thursday, April 24, 2014.

Ms. Jones testified that she would not consider herself an expert on the subject matter of the grievance, and that she was fairly new at her position. She testified that she had e-mailed advice to Ms. Hack based on NRS 284.180 and preliminary research she had performed on the FLSA website as it related to the 7(k) exemption for 24-hour firefighters. It was explained at the hearing that 7(k) referred to the part of the FLSA which specifically applied to government, public sector fire departments. Ms. Jones testified in substance that a government employer is allowed to establish a special 7(k) work period for sworn firefighters which can increase the FLSA overtime threshold beyond a normal 40 hour week, and that it was the public entity’s decision as to how many days it wanted to consider as a work period for purposes of the FLSA overtime calculation.

Ms. Jones was unable to determine if Mr. Perkins had been paid correctly because Central Payroll does not have access to time sheets and she had not contacted the agency for the relevant information. Ms. Jones testified that she had been consulted by Forestry on how to pay Mr. Perkins, but that she told Forestry she was uncomfortable interpreting NRS 284.180 and the FLSA requirement and suggested that Forestry reach out to its Deputy Attorney General.

The EMC discussed and deliberated on Mr. Perkins' grievance. In reference to some Committee members comments made at the start of the hearing, that they were uncertain if the EMC had jurisdiction over this grievance, the EMC determined it had jurisdiction and proceeded with the grievance hearing.

Some EMC members stated that it did not make sense for Mr. Perkins to be paid for time where he was not actually working. Additionally, EMC members thought that Forestry made efforts to understand the situation and pay Mr. Perkins the correct amount of money owed him. Furthermore, it was stated by the EMC that since Forestry performed an adjustment and paid its 24-hour firefighters their overtime every 28 days (testimony from Forestry's witness was that the work period was actually 27 days), it was not unreasonable to expect that an adjustment for overtime would look at a 28 day work period when a 24-hour firefighter worked a substantial amount of overtime in one week.

Some EMC members further stated that Mr. Perkins had not proven that he was not paid fairly by Forestry. Some of the EMC members suggested in substance that Forestry draft regulations to help clarify what amount 24-hour firefighters would be paid in certain situations. Additionally, one EMC member stated that it was important to note that Forestry said that they would not go back and recover the 13 hours of overtime which it had overpaid Mr. Perkins.

The EMC concluded to deny Mr. Perkins' grievance because Mr. Perkins did not demonstrate to the EMC that he was underpaid by Forestry. Additionally, it was recommended that Forestry work with the Division of Human Resource Management to write regulations pursuant to NRS 284.180(5) which would help clarify that statute.

**MOTION:** Moved to deny the grievance.  
**BY:** Chair Mark Evans  
**SECOND:** Committee Member Sherri Thompson  
**VOTE:** The vote was unanimous in favor of the motion.

**7. Discussion and possible action related to motion to dismiss of Grievance of Michael Maxfield, submitted by the Department of Corrections, supporting documentation, and related oral argument, if any – Action Item**

Nevada Department of Corrections ("NDOC") was represented by Deputy Attorney General Charles Mackey. Michael Maxfield ("Mr. Maxfield") was present in proper person. NDOC argued in its motion that the Employee-Management Committee ("EMC" or "Committee") did not have jurisdiction to consider Mr. Maxfield's grievance which challenged the October 23, 2013,

revisions to NAC 284.361(4) which requires an appointing authority to attempt to communicate with five persons in the top ten rankings of a ranked list when making a selection to fill an open position. NDOC noted that prior versions of NAC 284.361(4) required the appointing authority to communicate with persons in the first five ranks of a ranked list. Furthermore, NDOC pointed out that Mr. Maxfield requested as a resolution of his grievance that the EMC reinstate the requirement in former NAC 284.361(4) that the top five ranks be considered when NDOC conducted an interview, which was something that NDOC argued the EMC does not have jurisdiction to do.

NDOC further argued that the language of the revised version of NAC 284.361(4) was clear and unambiguous, and therefore there was nothing to interpret. Additionally, NDOC pointed out that although Mr. Maxfield cited NAC 284.373(1) in support of his argument, the regulation in no way conflicted with NAC 284.361. Moreover, NDOC argued that there were no facts presented to show that the agency violated any statute, regulation or policy in conducting the interviews in this situation, and that it had no obligation to interview Mr. Maxfield for the Associate Warden position. NDOC further noted that the revisions to NAC 284.361 went through the promulgation process, the Personnel Commission approved the revisions, and agencies are required to follow the regulation.

Mr. Maxfield argued in substance that the previous version of NAC 284.361 was plain and simple and that it said that everyone in the top five rankings of a ranked list would be interviewed if those ranked people accepted an interview. He further argued that the current version of NAC 284.361 did not say anything about an interview, and that the current version said that the agency would attempt to contact five persons in the top ten rankings to determine their availability and qualifications but that he and others who were on the ranked list were already determined to be qualified.

Mr. Maxfield stated in substance that in this particular situation, initially he was unqualified for the Associate Warden position but when NDOC had reissued the hiring announcement and he reapplied for the Associate Warden position, he became the number one ranked candidate. Mr. Maxfield stated that prior to the October 2013 amendment of NAC 284.361, he would always have received an interview, since he was ranked among the top five candidates. Additionally, he stated in substance that grievances had previously been filed because people were unable to get into the top five ranked positions to receive an interview for a position, and so the change to NAC 284.361 was made to increase the number of people to be interviewed to 10. He further argued, it was possible to potentially have 10-30 people eligible for one position, and to reduce this number to only five people would result in eliminating everyone else who applied for the position.

Mr. Maxfield argued that NAC 284.361 did not state the agency would contact five people for interviews; rather, it said that an agency would simply determine eligibility and availability of employment candidates, and that interpreting NAC 284.361 as NDOC interpreted it meant an agency could skip over the top five ranked or top ten ranked people on a ranked list without interviewing any of

those people. He stated that NAC 284.361(4) continued past where NDOC ended its argument, and that subsection (4) stated that the name on each type of list must be considered before the next succeeding list. In other words, he argued, if the agency contacted five ranked people on its list for potential hiring, and those five people turned the agency down then the agency could request that the second part of the ranked list be incorporated into the first list so that the agency would then have a top 10 ranking list. He continued, applying NAC 284.361, as NDOC said it was meant to be applied was vague and promoted a “good old boy system” because an agency could contact people on its top five ranked list who resided outside of Nevada, inferring the candidate would likely turn down an offer of out of state employment, and then interview and select the candidate the agency had chosen to hire prior to the recruitment.

Additionally, he argued in substance that NDOC was using an unranked list of employment candidates and running that list with the ranked list of candidates, and that NDOC should have made the list of candidates for the Associate Warden position an unranked list allowing NDOC to have been able to choose any person it wanted for the Associate Warden position without skipping over people on the ranked list who were already ranked and more qualified than the person NDOC hired for the Associate Warden position.

The Committee deliberated on the issues presented and determined that although some good points were raised by Mr. Maxfield, because he was grieving the content of the regulation and not NDOC’s application of the regulation, the Employee-Management Committee is not the proper venue since it does not have jurisdiction to resolve the matter. The Committee advised the appropriate process to initiate the amendment or repeal of a regulation is to petition the Administrator in accordance with NAC 284.830.

Co-Vice-Chair Stephanie Canter asked for a motion.

**MOTION:** Moved to grant the motion to dismiss.  
**BY:** Chair Mark Evans  
**SECOND:** Committee Member Allison Wall  
**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**

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