



**STATE OF NEVADA EMPLOYEE-
MANAGEMENT COMMITTEE**

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**Meeting Minutes of the Employee-Management Committee
(Subject to Committee Approval)**

Date: August 6, 2020

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
Mr. Guy Puglisi-Chair	X
Ms. Sonja Whitten	X
Ms. Jennelle Keith	X

Employee Representatives

Ms. Turessa Russell	X
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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 Puglisi called the meeting to order,

2. Public Comment

There were no comments from the audience or Committee Members.

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

Chair Puglisi, Department of Health and Human Services, opened the meeting by introducing himself.

Jennelle Keith, Department of Motor Vehicles, introduced herself.

Turessa Russel, University of Nevada, Las Vegas, introduced herself.

Sonja Whitten Business and Industry, Division of Insurance, introduced herself.

Robert Whitney, Deputy Attorney General, introduced himself.

Breece Flores, EMC Coordinator for the Carson City Office, introduced herself.

Ivory Wright, EMC Admin Clerk, introduced herself.

4. Adoption of the Agenda – Action Item

Chair Puglisi indicated that there are no changes to the agenda at this time and entertained a motion to adopt the agenda.

Jennelle Keith made a motion to adopt the agenda.

Turessa Russell seconded the motion. The motion passed unanimously.

MOTION: To adopt the agenda.
BY: Member Keith
SECOND: Member Russell
VOTE: The vote was unanimous in favor of the motion.

5. Approval of Minutes for May 16, 2019 - For Possible Action

This agenda item was bundled with agenda items 6 and 7.

6. Approval of Minutes for January 30, 2020 - For Possible Action

This agenda item was bundled with item numbers 5 and 7

7. Approval of Minutes for May 16, 2019, January 30, 2020, and March 12, 2020 - For Possible Action

Chair Puglisi asked for any changes needed for any of the minutes on the agenda needing approval.

Revisions to the minutes for May 16, 2019, January 30, 2020, or March 12, 2020 were emailed to members.

Sonja Whitten moved to approve the minutes with the emailed revisions.

Jennelle Keith seconded the motion. Motion passed unanimously.

MOTION: Approve Minutes, with the emailed revisions, as a package for May 16, 2019, January 30, 2020, and March 12, 2020

BY: Member Whitten

SECOND: Member Russell

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

8. Discussion and possible action related to Grievance #6837 Amy Calderwood, Department of Corrections – Action Item

This item was taken out of order.

This matter came on for hearing before the Employee-Management Committee on August 6, 2020.

Chair Puglisi indicated that this agenda would be moved to last in this meeting due to the amount of information involved in it.

Chair Puglisi informed the Committee that this grievance appears to involve a dispute with another employee, a matter that has since been referred or should be referred to the EEO given that the grievant is alleging retaliation, hostile workplace, and discrimination based on sex. Chair Puglisi noted that the EMC does not have jurisdiction to grant the relief the grievant is requesting in that she wants another employee transferred and reprimanded, nor does it have the authority to mandate an agency to transfer or reprimand anyone. Chair Puglisi informed the Committee that the date of the grievance is 10/11/2019, but the grievance goes into matters well beyond that time period. Chair Puglisi further indicated that the allegations listed in the grievance are provided for by federal law.

Chair Puglisi informed the Committee that Ms. Calderwood included the Family Medical Leave Act in her grievance, and the Chair did not realize that there was no federal venue for an appeal of that nature. Chair Puglisi informed the Committee that the US Office of Personnel Management indicates that Congress did not provide the OPM with any oversight or enforcement over the agency's administration of the FMLA Act and so an employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. As such, Chair Puglisi suggested that

although the topic has been comingled in the grievance, it does not necessarily apply.

Jennelle Keith opined that the grievant seems to have put this in to cover herself because she began with aggressive, inappropriate, unprofessional speaking to an individual that ended with profanity and a demand that Caseworker Childers (phonetic) leave her office. Member Keith indicated that Ms. Calderwood then indicates that she was upset because she was called a name. Member Keith further indicated that she does not see any kind of protected class violation in what she can read in the complaint and also indicated her uncertainty how the FMLA piece ties into the grievance at all. Member Keith concluded by stating her belief that this is not an EMC decision at all and that the grievance should be denied.

Chair Puglisi concurred that this appears to boil down to a dispute between two employees.

Jennelle Keith questioned what happened when the Inspector General was brought in and indicated that because the issue of discourtesy is being referred to the Inspector General, the grievance is out of the hands of the EMC Completely.

Turessa Russell indicated that on page 4, step 2, it appears that the grievant has been moved due to the needs of their restrictions.

Chair Puglisi clarified that these were special modifications during the grievant's pregnancy.

Sonja Whitten indicated her belief that this grievance should not move forward to a hearing.

Turessa Russell indicated her difficulty with trying to word a motion.

Jennelle Keith indicated that she too was struggling with the wording of a potential motion.

Chair Puglisi asked which NAC to reference regarding the allegations of discrimination based on sex.

DAG Robert Whitney indicated that the NAC in question is 284.696.

Member Keith made a motion to deny Grievance No. 6837 based on NAC 284.696, whereas relief may be available from another venue, and where the EMC lacks jurisdiction over the remaining matters presented.

Member Russell seconded the motion. The motion carried unanimously.

MOTION: Moved to deny grievance No. 6837
BY: Member Keith
SECOND: Member Russell
VOTE: The vote was unanimous in favor of the motion.

9. Discussion and possible action related to Grievance #7030 Lawrence Black, Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee on August 6, 2020.

Chair Puglisi indicated that possible action on this agenda item may include reviewing the request for consideration to determine if the grievance can be answered without a hearing, if the matter is based upon an EMC's previous decision, or if it does not fall within the EMC's jurisdiction.

Chair Puglisi explained that this is a grievance involving the work schedule of an employee who commutes between Washington state and Nevada and has had the same schedule for 14 years. Chair Puglisi indicated that based on other decisions that have come before the Committee regarding schedule change, the grievances were denied based on the fact that the agencies have the right to manage their affairs as they deem appropriate.

Jennelle Keith agreed with the previous rulings but also indicated that based on the letter of instruction given on 1/9/20 and then the written reprimand dated 1/9/20, there was no time given to the employee to potentially correct any actions.

Chair Puglisi indicated that even if the request were to be moved to hearing, the employee will be retiring in a matter of months, thus making the hearing moot.

Sonja Whitten indicated that given the signing of collective bargaining law, changing work schedules can be considered an unfair labor practice and as such, this could be a valid grievance.

Chair Puglisi asked Member Whitten for further clarification on this law.

Sonja Whitten explained that under the law, changing of schedules can be viewed as a change in work conditions, which can be considered an unfair labor practice prior to contract negotiations.

Turessa Russell asked if the Committee were to schedule this hearing, how soon could it be on the agenda and heard.

Chair Puglisi indicated that the Committee likely would not hear this until September at earliest.

Breece Flores informed the Committee that the September spots have all been taken and the next availability was not until October 1, which is the date on which Mr. Black intended to retire.

Chair Puglisi reiterated that the grievance could be moved to a hearing, but it might be redundant to do so. Chair Puglisi pointed out that Mr. Black was specifically focused on the changing of the work schedule and the Chair indicated that he did not see anywhere in the documentation that Mr. Black was contesting the disciplinary actions.

Jennelle Keith indicated that on page 1, under detailed description, Mr. Black wrote, "I received a written reprimand on 1/9/20 for issues based on my lack of communication with my supervisor, some of which I challenge."

Chair Puglisi noted that on the bottom of page 4 in the response, under step 3, it is indicated that any employee who participates signs an agreement and that the agreement specifies the work hours in the agreement and that they can be terminated by either party with 30-days' notice. Chair Puglisi indicated that the letter of instruction could have been that notice.

Member Russell made a motion to move Grievance No. 7030 forward to a hearing.

Member Keith seconded the motion. The motion carried unanimously.

MOTION: Moved to move grievance No. 7030 forward to a hearing
BY: Member Russell
SECOND: Member Keith
VOTE: The vote was unanimous in favor of the motion.

10. Discussion and possible action related to Grievance No. 7284, William Willis, Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee on August 6, 2020.

Chair Puglisi indicated that possible action on this agenda item may include reviewing the request for consideration to determine if the grievance can be answered without a hearing, if the matter is based upon an EMC's previous decision, or if it does not fall within the EMC's jurisdiction.

Chair Puglisi explained that Mr. Willis' alleges in his grievance that the agency took advantage of pay acceleration for new hires, specifically for a position which Mr. Willis held formerly as a fleet services worker. Chair Puglisi informed the Committee that the agency has the latitude to hire workers at an accelerated rate of pay as long as it is approved ahead of the time of hiring. In addition, Chair Puglisi indicated that the agency has the latitude to make adjustments to existing employees' pay if disparities exist. Chair Puglisi suggested that this likely does not apply to Mr. Willis as he holds a position in a different series. Chair Puglisi informed the Committee that the EMC has heard grievances before specifically from this agency, most of which were denied. Chair Puglisi further indicated that there were some mentions of discrimination, over which the Committee has no jurisdiction.

Turessa Russell indicated that on page 4, in the grievance comments, Mr. Willis was asking for information and receiving no response.

Chair Puglisi suggested that if someone were to grieve this, it should be someone in the series of fleet service workers because if an individual was hired in at the top of the pay scale, it would make sense that those on lower steps of the pay scale feel aggrieved despite the fact that the agency cannot necessarily take the whole series of individuals

to the top of the pay scale. Chair Puglisi summed up the complaint by indicating that Mr. Willis appears to want more money because somebody else in a different series was hired at a higher step.

Jennelle Keith indicated that this does not appear to be an issue over which the EMC has any jurisdiction.

Turessa Russell indicated that given the circumstances and the amount of time that has elapsed, there is not anything the EMC can do with this grievance.

Jennelle Keith asked if this issue of equal pay was something that collective bargaining and unions in the State of Nevada would address.

Sonja Whitten informed the Committee that wages and things of that nature will be items that members of the bargaining team will negotiate.

Jennelle Keith indicated that based on the documentation, at the time of Mr. Willis' hire, he was treated equally so there is not basis for the complaint that he is being treated unfairly.

Chair Puglisi concurred, noting that this grievance does not involve an apples-to-apples comparison given that Mr. Willis is no longer a fleet service worker. Chair Puglisi also indicated that these types of grievances, even when within the same classification, were denied in the past because past decisions can't be undone after a decision is made in the future.

Jennelle Keith concurred.

Chair Puglisi informed the Committee that Conclusions of Law, per NAC 284.204, provides that the Department of Personnel may approve the adjustment of steps within the same grade to allow an appointing authority the flexibility to employ a person whose education or experience is superior to those of another eligible person and who exceeds the minimum qualifications of the class. Chair Puglisi continued that it also provides that the Department of Personnel may approve an adjustment of steps to maintain an equitable relationship in the status of steps among the employees of the appointing authority if a disparity exists. The exercise of the authority granted by this regulation is discretionary. Chair Puglisi further indicated that in this particular grievance, it states that the grievant failed to show the Employee X does not possess superior education or experience or that any disparity exists, warranting an adjustment of the grievant's steps.

Sonja Whitten indicated her belief that this grievance does not warrant a full hearing.

Chair Puglisi indicated that if the Committee is looking to deny this grievance, the decision that the Chair referenced, 9409, can be cited.

Member Whitten made a motion to deny Grievance No. 7284 based on previous decision grievance 9409 and the fact that there is no evidence that NAC 284.204 was violated.

Member Keith seconded the motion. The motion carried unanimously.

MOTION: Moved to deny grievance No. 7284
BY: Member Whitten
SECOND: Member Keith
VOTE: The vote was unanimous in favor of the motion.

11. Public Comment

Chair Puglisi opened the floor to public comment.

Jennelle Keith informed the Committee that she has accepted a new position at the Department of Motor Vehicles and that when her term expires, she will not be able to continue on the Committee but will stay until her seat is filled so as not to leave the Committee without a member.

The members of the Committee congratulated Member Keith on her new position.

Chair Puglisi indicated that the Commissions all expire in October and three members, Member Jennelle Keith, Member Pauline Beigel, and Chair Puglisi will not be seeking reappointment.

There was no additional public comment.

12. Adjournment

Chair Puglisi adjourned the August 6, 2020 meeting of the Employee Management Committee at 12:01 p.m.