



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
September 18, 2014

Held at the Bryan Building, 901 S. Stewart St., Tahoe Conference Room, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1100, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	X
Ms. Mandy Payette–Co-Vice-Chair	
Ms. Bonnie Long	X
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	X

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 Mark Evans requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.

BY: Co-Vice-Chair Stephanie Canter

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 Jaime Brown, submitted by the Department of Public Safety, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was filed with the Employee-Management Committee (“EMC” or “Committee”) by the agency employer Department of Public Safety (“DPS”) represented by Deputy Attorney General David Keene (“Mr. Keene”). An Employee’s Response to the Department of Public Safety’s Motion to Dismiss was filed by Grievant Jaime Brown. DPS filed a Reply to Opposition to Motion to Dismiss. Grievant Jamie Brown was present in proper person.

DPS argued that the Committee did not have jurisdiction to hear this grievance because Ms. Brown’s grievance had resulted in a conference between DPS and the Grievant which had resulted in a decision to revise the current policy regarding interviewing for lateral transfers with promotional employees, which DPS contends renders that portion of the grievance moot. Additionally, DPS contends that Ms. Brown failed to allege a failure to follow statutory or regulatory provision in the failure to promote her to the rank of Captain and thus the EMC lacks jurisdiction over that issue as well.

Ms. Brown asserted that DPS is making promotional decisions based on nepotism and other factors outside of those permissible by statute and regulation and desires the grievance to go forward. Both parties agreed during oral argument that at the present time, the existing policy had not been changed.

At the hearing, Ms. Brown clarified that she wanted a fair resolution to the allegations of nepotism and violation of transfer policy and did not wish to be limited to the proposed resolutions listed in her grievance. The Committee noted that it has not limited itself to the requested remedies in past grievances and as the policy revision had not yet been adopted, jurisdiction over this grievance continued with the Committee.

After having read and considered argument from both sides, the EMC deliberated and concluded nothing was preventing them from hearing the case.

Chair Mark Evans requested a motion.

MOTION: Moved to deny the motion to dismiss.
BY: Co-Vice-Chair Stephanie Canter
SECOND: Committee Member Bonnie Long
VOTE: The vote was unanimous in favor of the motion.

5. Adjustment of Grievance of Tania Arguello, Department of Corrections – Action Item

Tania Arguello (“Ms. Arguello” or “Grievant”) was present and was represented by Michael Flamm (“Mr. Flamm”). The Nevada Department of Corrections (“NDOC”) was represented by Deputy Attorney General Dominika Batten. The exhibits submitted to the EMC prior to the hearing were marked. There were no objections to the exhibits. Expert Witness Keyna Jones from Human Resource Management Central Payroll was duly sworn and testified at the hearing.

Ms. Arguello stated she worked an overnight shift in which her shift began on one calendar day and ended on a different calendar day. Ms. Arguello argued NDOC improperly calculated the pay she received for holidays and in the process denied her the full pay that she was entitled to for the July 4th holiday in 2013. She further contended that NDOC’s interpretation of NAC 284.257 was incorrect and resulted in other incorrect holiday pay calculations which persisted and continued to the present day. As proposed resolution, Grievant requested that the holiday pay be recalculated for her past shifts and she be paid additional compensation and that the allegedly improper method of calculating holiday pay be discontinued. Ms. Arguello argued that she was entitled to 8 hours of holiday pay pursuant to NAC 284.255(2). Additionally, she claimed that because she worked 6 hours of the July 4th holiday, she was entitled to 6 hours of holiday premium pay pursuant to NAC 284.246 for the time she actually worked on the holiday.

NDOC argued their position that all employees were entitled to 8 hours of pay for holidays and that any hours worked on the holiday would be compensated in addition to the 8 hours of holiday pay and that the Grievant had been correctly compensated. It was undisputed that Grievant received 6 hours of pay for the work performed on the holiday and an additional 8 hours for the holiday. Grievant had previously argued at the June 12, 2014, EMC hearing successfully defeating NDOC’s argument for Dismissal that the Committee had jurisdiction to hear her grievance because she was not arguing that the regulation dealing with holiday pay or the instructions from Central Payroll were incorrect; rather, she argued that NDOC was not correctly applying the appropriate regulation and Central Payroll’s instructions to her particular circumstances.

Ms. Jones testified NAC 284.257 allows employers to calculate pay according to a calendar day or a shift day and that NDOC designated a calendar day for calculation of compensation. Based on that designation, Ms. Arguello was compensated for 6 hours of regular pay and 8 hours of holiday pay and was compensated correctly under the Central Payroll guidelines.

Ms. Arguello then further provided a pay stub indicating the rates of compensation and the initial payment of 12 hours of pay and the later reduction

of 4 of those hours. Based on the testimony of the expert witness that NDOC had paid correctly, the Committee was satisfied that the time was coded correctly, but requested a further audit regarding the amount of pay reflected on the pay stubs provided.

The EMC reviewed the evidence; considered the statements of the witnesses and the arguments of counsel and the parties; and deliberated on the record. As Ms. Arguello failed to establish that the time sheet was coded incorrectly, the Committee concluded to deny the Grievance. However, the Committee also directed Central Payroll to conduct an audit and report back to the Committee of the results and recommended that NDOC clarify for their employees whether it was paying employees on a calendar or a shift day under NAC 284.257.

MOTION: Moved to deny the grievance.
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 Robert Fisher #3220, Department of Agriculture – Action Item

A Motion to Dismiss was filed with the Employee-Management Committee September 16, 2014 by the agency employer Department of Agriculture represented by Deputy Attorney General Cameron Vandenberg (“Ms. Vandenberg”). At the start of the hearing grievant representative Mr. Kenneth McKenna (“Mr. McKenna”) raised argument that the motion to dismiss should not be considered. He stated he was out of the office and had not read the motion filed on his client’s grievance or prepared opposition to the motion. He argued it was an unfair practice of the EMC to accept the agency’s documents since he had not prepared documents on his client’s behalf. Chair Mark Evans and Co-Vice-Chair Stephanie Canter informed Mr. McKenna that in the past they had heard motions made at the hearing. Mr. McKenna declined another opportunity given him to read the motion, saying he would read it in due course. Ms. Vandenberg argued the motion should be heard as they had done so in the past or alternatively, she would motion to hold the grievance in abeyance. EMC Counsel, Deputy Attorney General, Greg Ott (“Mr. Ott”) advised the Committee of the options available to them. Alternative to hearing the motion to dismiss, Mr. Ott stated he would seek for the EMC to delay the hearing. The Committee continued on with hearing the motion to dismiss heeding Mr. Ott’s advisement that there is no statutory timeframe for a motion to be made; it is the Committee’s choice to hear a motion; the Committee is not prejudiced by hearing the motion; and Mr. McKenna has further opportunities to make any type of motion or argument he chooses, including a motion for a continuance.

Chair Evans asked the Committee if they thought the EMC had jurisdiction over the grievance and stated that in his view it was clearly a discrimination case in that the grievant alleges he was treated differently due to national origin and the complaint had been filed with the Equal Employment Opportunity and Discrimination Investigation Unit.

Stephanie Canter stated that the Committee could continue forward with regard to the qualification process which had been heard in the past, provided that nothing about national origin was addressed.

Chair Evans noted when an applicant disagrees with the determination that he or she does not meet the minimum qualifications, the matter is to go to the Personnel Commission. He additionally stated, they have heard grievances about the recruiting process not being done correctly or fairly. Chair Evans stated his concern that typically complaints which are appropriately filed in another area are not additionally heard by the EMC.

Chair Evans stated he needed to take a break and consult with EMC Counsel off the record.

Upon return from the break Chair Evans stated that it was important to him that Mr. McKenna's client receive a fair hearing and that based on Mr. McKenna's actions Chair Evans did not believe he could be fair and impartial on the case. Chair Evans stated they felt Mr. McKenna should have time to review the employer's motion to dismiss. Chair Evans stated he felt it would be fairest to Mr. McKenna's client for him to recuse himself which in turn meant an employee representative of the Committee would also have to step down and the meeting would be chaired by Co-Vice-Chair Canter located in Las Vegas. Chair Evans stated they did not feel it was fair to the Co-Vice-Chair to chair the meeting without her attorney by her side. Chair Evans then asked the Committee to continue the hearing to a later date whereby allowing Mr. McKenna opportunity to review the employer's motion to dismiss and giving the EMC Coordinator the chance to put together a committee that would hear the case.

MOTION: Moved to continue to a later date to allow Mr. McKenna and Mr. Fisher to properly prepare.
BY: Committee Member Michelle Weyland
SECOND: Committee Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

During the period of time when the Committee had moved and voted to continue the hearing, and without being recognized or granted the floor, Mr. McKenna began speaking over the Committee members asserting that he was prepared to proceed and lodging various unrelated accusations at the Committee and its Chair, none of which were commented on.

7. Public Comment

There were no comments from the audience or Committee members.

Chair Evans stated he will take a motion to adjourn.

8. Adjournment

MOTION: Moved to adjourn.
BY: Committee Member Donya Deleon
SECOND: Committee Member Bonnie Long
VOTE: The vote was unanimous in favor of the motion.