



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
Phone: (775) 684-0135 | www.hr.nv.gov | Fax: (775) 684-0118

**Meeting Minutes of the Employee-Management Committee
Date: May 20, 2021**

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
Ms. Pauline Beigel-Chair	X
Ms. Jennifer Bauer	X

Employee Representatives

Mr. Tracy DuPree	
Ms. Turessa Russell	
Ms. Sherri Thompson	
Ms. Stephanie Parker-Co-Vice Chair	X
Mr. Gwyn Davies-Co-Vice Chair	X

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 Beigel opened the meeting at approximately 9:01a.m.

2. Public Comment

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

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

4. Adoption of the Agenda – Action Item

Chair Beigel requested the committee to approve the agenda.

MOTION: Moved to approve agenda.

BY: Member Parker

SECOND: Member Bauer

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

5. Adoption of the Meeting Minutes – Action Item

MOTION: Moved to approve minutes from 02.04.2021.

BY: Member Parker

SECOND: Member Bauer

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

6. Discussion and possible action related to Grievance #7385, Jesse Haines Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee¹ (“EMC”) on May 20, 2021, pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance #7385, filed by the State of Nevada, Department of Corrections Officer Jesse Haines (“Grievant” or “Officer Haines”). The Grievant was present in proper person. The Agency-Employer, the State of Nevada, Department of Corrections (“NDOC”) was not present. The Grievant was sworn in and testified at the hearing.

¹ The Committee members present at the hearing representing a quorum were as follows: Pauline Beigel (NDOT), who chaired the meeting; Stephanie Parker (UNR), Gwyn Davies (DMV) and Jennifer Bauer (SPCSA). Counsel for the Committee, Deputy Attorney General Robert A. Whitney, was also present, as were EMC coordinator Breece Flores and EMC Admin. Clerk Ivory Wright.

STATEMENT OF THE CASE

Mr. Haines testified that he received three written reprimands and had two of them removed through the grievance process, and he was asking the EMC to remove the third written reprimand from his file.

Mr. Haines stated that NDOC was inconsistent with disciplinary action and that he had EMC Decision #34-19 in his favor, which stated that NDOC must provide him with at least four hours-notice before he could be required to work overtime.

Mr. Haines stated in substance that he was aware of another EMC decision where NDOC employees were to be paid for actual hours worked and that had yet to occur.

Mr. Haines noted that he would provide evidence of FMLA violations by NDOC.

Mr. Haines again requested that the EMC vote to remove the written reprimand issued on August 11, 2020, from his file.

Chair Beigel noted that she was unsure that the FMLA violation was in Grievance #7385, so Mr. Haines could not bring that matter up now, although Mr. Haines felt that issue was relevant to the current grievance.

Mr. Haines stated that he felt the written reprimand issued on August 11 should be removed because it was unjust.

Mr. Haines stated that on February 24, 2020, at 11:55 a.m., he had refused mandatory overtime and there was no action taken for the refusal because NDOC failed to provide four hours of notice in accordance with EMC Decision No. 34-19.

Mr. Haines testified that on July 28, 2020, he requested an FMLA hours, which put NDOC on notice that he had an FMLA qualifying condition.

Mr. Haines stated, on July 28, 2020, according to at 4:45 a.m. he was notified by Sergeant Tolotti of mandatory overtime, and that he was not paid for that time, and that according to NDOC during that time his shift started and stopped when he was at a unit.

Mr. Haines asked how he could be disciplined for something when he was still off the clock and was not in paid status until he arrived at the unit.

Mr. Haines also asked the EMC to consider he had court-ordered custody of his son, which NDOC was aware of, and that his refusal to work mandatory overtime was during the pandemic, and he could not find a baby-sitter for his son.

Mr. Haines stated that at 12:05 p.m. on July 28, 2020, Sergeant Flamm called him saying he needed to mandate Mr. Haines to work overtime that same day.

Mr. Haines stated that on July 29, 2020, he received a written reprimand for an event that occurred 6/23/20, where the reprimand stated that he was notified at 9.50 a.m. by Sergeant Tolotti that if there was another sick person call in, he would need to stay and work overtime. At 10:50 a.m. Sergeant Tolotti called him again stating that he was mandated to work overtime.

Mr. Haines stated that this communication was not per the four-hour notice requirement and that the reprimand was issued over a month after the event, and right after he requested FMLA.

Chair Beigel asked Mr. Haines if the hearing was specifically for the written reprimand dated June 28, 2020.

Mr. Haines responded “yes.”

Chair Beigel asked Mr. Haines if the reprimand was the one starting “On June 23rd you were notified at approximately 9.50 a.m. you would be mandated to work overtime if there was another sick call in”

Mr. Haines stated that was not the reprimand which he was grieving. The correct reprimand was subsequently submitted, minus its last page, and this document were subsequently posted to DHRM’s website.

Mr. Haines informed the EMC that he had received multiple written reprimands after he requested FMLA, and that he had refused mandatory overtime since the issuing of the instant reprimand and had received no disciplinary action, and that he had refused mandatory overtime before the issuing of the instant written reprimand and had received no disciplinary action, and that it was not until she requested FMLA that NDOC decided to pursue discipline against him.

Mr. Haines stated that two of the written reprimands were removed at the Deputy Director level through the grievance process.

Mr. Haines testified that his issue with this grievance was that the 4:45 a.m. notice was when he was considered off the clock, and then at 12:05 p.m. when Sergeant Flamm called him while he was on shift, which would not have been four hours-notice.

Mr. Haines added that he had an upcoming hearing because he had been put under investigation by NDOC for refusing multiple mandatory overtime assignments, even though some of the underlying reprimands resulting from those refusals were removed due to NDOC violations of the NAC [apparently NAC 284.252].

Mr. Haines stated he failed to see how he could be disciplined for a matter that occurred when he was not in paid status.

Chair Beigel asked Mr. Haines if he was saying that NDOC told him it would be mandatory overtime and gave him 15 minutes before the shift started that he needed to work mandatory overtime and he told them no.

Mr. Haines responded that was correct, he could not find childcare due to COVID.

Chair Beigel stated that Mr. Haines was given the four-hour notification window, correct.

Mr. Haines responded that he did not consider the 4.45 a.m. contact notification because he was not in paid status at that time.

Mr. Haines added that he thought he should be paid for that time and that he had filed a Grievance about the matter and had still yet to be paid for that time because those activities were considered pre-shift activities.

Mr. Haines, responded to a question from Chair Beigel, stated that the 12:05 p.m. notice would not have been four hours' notice because his shift was from 5:00 a.m. to 1:00 p.m.

Member Parker asked Mr. Haines if anyone was ever asked to work mandatory overtime when not on shift.

Mr. Haines stated that action did not occur and that NDOC did not call anyone at home to tell them they needed to work mandatory overtime.

The EMC began the deliberations.

Member Bauer stated that she understood the Grievant's concerns, but what she thought it came down to was whether an agency was complying with law and regulation if they notice an employee of a requirement to work mandatory overtime before or during a shift.

Member Bauer stated that she did not see anything in regulation that contemplated when the notice should be provided other than the four hours.

Member Davies asked how to regard NDOC failing to appear and asked if the written reprimand the EMC was specifically addressing cited to two previous instances that were withdrawn.

Chair Beigel responded concerning NDOC failing to appear, she did not believe that was something the EMC would ever consider doing.

Member Bauer stated in her response to being asked for her opinion, she stated in substance that she did not venture to try and determine why an Agency did or did not appear for any hearing.

Member Bauer noted that when employers had previously failed to appear at a hearing, she had asked a previous deputy attorney general what to do in that case and she was advised to contemplate the decision based on the evidence provided by those present and the packets or the grievance which had been submitted.

Chair Beigel's stated she thought, with respect to Member Bauer's question, that if the EMC decided it wanted to deny the grievance regarding removing this written reprimand it could do so but thought that the EMC could add a caveat to the decision such as "per testimony, the prior discipline should be struck from that written reprimand."

Member Parker stated that when looking at policy she did not know that even on voluntary overtime NDOC did not call on employees off time, and there was nothing written saying that NDOC had to contact its employees either on or off the clock.

Member Parker stated that she believed that the written reprimand was inaccurate, so she would agree with ensuring that references to the prior disciplinary action mentioned, which based on testimony no longer existed, were removed.

Mr. Haines stated that since he was not paid for the time, he was told he was required to perform voluntary overtime would he be paid for the time if the reprimand from August 11, 2020, was found valid.

Chair Beigel responded in substance that she did not believe that was a question the EMC would be able to answer at that hearing.

Member Parker stated that she would agree with Chair Beigel's assessment.

Member Davies stated that he had an issue with the written reprimand in part because it was not contested by the agency, they had not countered any of the points made by the Grievant, and he felt that the reprimand was poorly handled, although he felt notice was given sufficiently.

Member Davies stated he also felt that the reprimand was poorly written and that the agency should have provided someone at the hearing to make counter-arguments.

Member Davies stated he felt that the EMC should find the written reprimand needed to be removed from the Grievant's file.

Member Davies added in substance that he was looking to add language stating that the reprimand was issued without cause.

Chair Beigel stated that she understood Member Davies wanted to make a motion to grant the Grievance in part regarding removing the reprimand, as even though the reprimand may have had merit it was not properly worded.

Member Davies motioned that the EMC grant the grievance and direct the NDOC to remove the written reprimand from the Grievant's file and that the EMC find that the written reprimand was issued with just cause, but that NDOC's application or implementation of the written reprimand was poorly done.

Member Parker offered an amendment to Member Davies' motion.

Member Davies motioned with an amendment by Member Parker was to grant the grievance and direct NDOC to remove the written reprimand from the personnel file of Mr. Haines. Although the claim may have had merit, NDOC was not present to provide evidence that the voluntary or mandatory overtime list had been exhausted before the 11:50 a.m. notification and had more accurately provided the reprimand with accurate information.

Member Bauer stated that she agreed with her fellow EMC Members and understood the reasoning behind the motion, but she was torn because she was unsure whether the mandatory or voluntary overtime list being exhausted was relevant to the substance of why the written reprimand was issued.

Member Bauer stated that she could not find anything in NRS or NAC which indicated that the four-hour notice for mandatory overtime must be provided while the employee was in paid status.

Chair Beigel stated in substance that she agreed with Member Bauer.

Member Parker noted that even when looking at 4:45 a.m., when the Grievant advised that he would be unable to work mandatory overtime, four hours later that gave NDOC ample time to run through the rest of its employee list, and that NDOC started the process again by mandating the Grievant at 11:50 a.m. for the overtime.

Chair Beigel stated that her thought was Mr. Haines had been notified more than four hours before having to work mandatory overtime so that he would be required to work mandatory overtime, and the Grievant said no, that he could not work the overtime, so she did not see where NDOC had violated any AR's that were referenced in the grievance which concerned the management of overtime.

Member Davies's motion was seconded by Member Parker.

The motion failed to pass, as the EMC voted on the motion and it was tied² and therefore **Grievance #7385** was **denied**.

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, the briefs, evidence, and documents on file in this matter, the EMC makes the following findings of fact. All findings made are based upon a preponderance of the evidence.

1. The Grievant was a non-exempt State of Nevada employee.
2. The Grievant was employed by NDOC as a Correctional Officer on July 28, 2020.
3. The Grievant's shift on July 28, 2020, started at 5:00 a.m. and ended at 1:00 p.m.
4. At 4:45 a.m. on July 28, 2020, NDOC Sergeant Tolotti told the Grievant that he was mandated to work mandatory overtime on the swing shift on July 28, 2020.
5. At approximately 4:45 a.m. on July 28, 2020, the Grievant responded that he would not work the mandatory overtime on swing shift due to it being impossible for him to find a babysitter for his son due to the COVID-19 pandemic.
6. At 11:50 a.m. on July 28, 2020, NDOC Sergeant Flamm contacted the Grievant and told the Grievant that he was mandated to work mandatory overtime on July 28, 2020.
7. The Grievant told Sergeant Flamm that he was refusing to work the mandatory overtime.
8. The Grievant did not work the mandated overtime on July 28, 2020.
9. The Grievant was issued a written reprimand on August 11, 2020, for refusing to work mandatory overtime on July 28, 2020.
10. NDOC failed to appear at the hearing for Grievance #7385.

CONCLUSIONS OF LAW

1. A grievance is any act, omission, or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee.
2. NAC 284.242(1) states: "If a nonexempt employee is required to work overtime, the overtime must be authorized pursuant to subsection 10 of [NRS 284.180](#) and communicated to the employee at least 4 hours in advance by the responsible supervisor before being worked unless an unpredictable emergency prevents prior approval and communication."
3. When NDOC communicated to the Grievant at 4:45 a.m. on July 28, 2020, that he was mandated to work overtime on swing shift it communicated to the Grievant more than four hours in advance that he was mandated to work overtime on July 28, 2020. Additionally, although the Grievant was not in paid status at 4:45 a.m. on July 28,

² Members Davie and Parker voted in favor of the motion, Chair Beigel and Member Bauer voted against the motion.

2020, this fact made no difference pursuant to NAC 282.242(1). Thus, NDOC complied with NAC 284.242(1).

MOTION: Member Davies motioned with an amendment by Member Parker to grant the Grievance and direct NDOC to remove the written reprimand from the personnel file of Mr. Haines. Although the claim may have had merit, NDOC was not present to provide evidence that the voluntary or mandatory overtime list had been exhausted before the 11:50 a.m. notification and had more accurately provided the reprimand with accurate information.

BY: Member Davies

SECOND: Member Parker

VOTE: The vote was 2 nays, and 2 yay the motion died, and Grievance #7385 is denied.

7. Discussion and possible action related to Grievance #7252, Daniel Wheeler with the Department of Corrections – Action Item

Chair Beigel opened the committee up for discussion.

Member Parker stated she wanted to move Grievance #7252 forward to hearing and see if AR 326 was violated.

Member Bauer stated she agreed with Member Parker and this Grievance warrants a hearing to determine if the policy was violated.

Member Davies stated he also agreed with the committee members and wondered how this Grievance would sit with the Collective Bargaining Agreements currently in place.

Chair Beigel asked Mr. Whitney can they do this decision and have it affected by the agreements the Collective Bargaining Unit is currently working on the Grievance would be moot.

Mr. Whitney responded to Chair Beigel that yes it would leave this Grievance moot as there are contracts set up for this group.

Member Parker motioned to move Grievance #7252 forward to schedule for a hearing to review if the policy was broken in AR 326, and NRS, and NAC.

Mr. Whitney stated the verbiage was good as long as all members understand that Grievance #7252 for Mr. Wheeler will be moved to hearing and understand the motion.

Member Parker motioned to move Grievance #7252 for Daniel Wheeler forward to hearing to review the allegation of the AR listed in the grievance.

MOTION: Motioned to move Grievance #7252 for Daniel Wheeler forward to hearing.

BY: Member Parker

SECOND: Member Bauer

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

8. Discussion and possible action related to Grievance #7526, Stephany Butler with the Department of Corrections – Action Item

Chair Beigel opened the Committee up for discussion.

Chair Beigel stated her feeling was this grievance should be in another venue listing allegations of harassment, she stated she saw the complaint was sent to the EEO Department.

Member Parker stated she agreed with Chair Beigel, she noted apart about overtime but was not sure about jurisdiction.

Member Davies stated he does not think this Grievance is in the proper Venue. He agreed with the members.

Member Bauer stated she also agreed with the Committee Members while reviewing noted the serious allegations but they do not fall within EMC jurisdiction, it would not be appropriate to schedule this Grievance for hearing.

Member Davies motioned that the grievance is denied based on jurisdiction. He requested the NAC or NRS listed in the decision.

Member Parker stated she would agree to the amended motion.

Member Parker stated she moved to deny Grievance #7256 without a hearing, based on previous decisions, and the Grievance does not fall within the EMC Jurisdiction. The Grievant may find relief pursuant to NAC 284.658(2) and more appropriate venues pursuant to NAC 284.696(1).

Member Davies agrees to the amendment of the motion.

Member Davies seconds the motion.

MOTION: Moved to deny Grievance #7256 without a hearing, based on previous decisions, and the grievance does not fall within the EMC Jurisdiction. The Grievant may find

relief pursuant to NAC 284.658(2) and more appropriate venues pursuant to NAC 284.696(1).

BY: Member Parker

SECOND: Member Davies

VOTE: The vote unanimously in favor of the motion.

9. Discussion and possible action related to Grievance #7616, Matthew Gregory with the Department of Corrections – Action Item

Chair Beigel opened the Committee for discussion.

Chair Beigel stated this Grievance was regarding the change of work hours and believed we have heard similar cases prior.

Member Parker stated while she reviewed, she did not see from the evidence on the Grievance that the policy was violated.

Member Bauer stated she agreed with her and the Grievance mentioned Collective Bargaining, but she didn't know if this would be covered in that agreement.

Member Bauer stated the substance of the Grievance would be relevant to the Collective Bargaining Agreement. The previous decision the EMC has decided was the Agency can run as they see fit. She stated she didn't think the EMC could offer a remedy.

Member Davies stated if this grievance would be covered in the Agreement or not would be the active date of July 1st, 2021. He stated the Grievance is at the highest level of Authority that has reviewed the Grievance.

Member Davies stated he wanted to know if they could continue the grievance if it should be covered in the Collective Bargaining Agreement so it could be heard.

Chair Beigel stated she hasn't seen the contracts active as of yet.

Member Davies stated even if the agreements are in effect if we continue it or deny it, a remedy could be offered in this agreement and the EMC cannot decide on this.

Member Bauer stated in the Corrections shift bid comes up yearly when they hold it. She stated she understood it was with the desire to address shift bids, and the Agency can run as it sees fit.

Member Bauer stated she would support a motion to move to deny the Grievance without a hearing based on previous decisions and the Agency can run as they see fit pursuant to NRS 284.695(1). The Grievance doesn't fall within the EMC jurisdiction due to the Agency can run as

they see fit pursuant to NAC 284.020(2).

Member Bauer motioned to answer Grievance #7616 for Matthew Gregory without a hearing based on previous EMC decisions or does not fall within the jurisdiction pursuant to NAC 284.695(1), additionally NRS 284.020(2) The Appointing Authority has the right to run the Agency as they see fit.

Member Parker seconded the motion.

MOTION: Move to deny Grievance #7616 for Matthew Gregory without a hearing based on previous decisions or does not fall within its jurisdiction pursuant to NAC 284.695(1) additionally the Appointing Authority has the right to run their Agency as they see fit pursuant to NRS 284.020(2).

BY: Member Parker

SECOND: Member Bauer

VOTE: The vote unanimously in favor of the motion.

10. Discussion and possible action related to Grievance #7440, Abuhantash Abdelqader with the Department of Corrections – Action Item

Chair Beigel opened the Committee for discussion stating her thoughts where this Grievance does not meet the definition of a grievance.

Member Bauer stated she agreed with Chair Beigel she did not see where the grievance met an injustice on the actions taken. She stated if the grievance has serious allegations of harassment or retaliation that would belong in a different venue than the EMC.

Member Parker stated she agreed with their fellow members.

Member Davies stated he agreed with the members it would not be the EMC jurisdiction to offer a remedy.

Member Parker makes a motion to answer grievance #7440 without a hearing as the Grievance does not fall within the EMC's jurisdiction pursuant to NAC 284.658 and does not meet the definition of a Grievance, and pursuant to NAC 284.658(2) remedy may be offered in a different venue.

Member Davies questioned why both regulations are listed.

Chair Beigel stated the previous decisions have listed both to direct the Grievant where they can take the complaint where the remedy would be offered.

Member Davies agreed and thanked Chair Beigel for explaining it.

Member Parker stated she agreed with Member Davies and also, she wants to list options for the grievant to have. She stated giving resources is important.

Member Davies seconds the motion.

MOTION: Motion to answer grievance #7440 without a hearing as the Grievance does not fall within the EMC's jurisdiction pursuant to NAC 284.658 and does not meet the definition of a Grievance, and pursuant to NAC 284.658(2) remedy may be offered in a different venue.

BY: Chair Beigel

SECOND: Member Bauer

VOTE: The vote unanimously in favor of the motion.

11. Discussion and possible action related to Grievance #7748, Christian Rowley with the Department of Corrections – Action Item

Chair Beigel opened the committee up for discussion.

Member Parker stated she didn't think they had enough evidence and facts listed in the Grievance to determine the outcome.

Member Beigel agreed but stated what was listed in the Grievance was covered in the AR they were grieving. The Agency can run as they see fit.

Member Bauer stated the EMC has heard similar Grievances to this one and the NOTIS system and who puts information in them. She stated that was within the Agency running as they see fit with their discretion.

Member Bauer stated who had access, and what is in place in this system was up to the Appointing Authority and the Agency running as they see fit for the needs of the Agency. She stated because of this the EMC does not have jurisdiction to grant a remedy.

Member Bauer stated what was listed in the Grievance was not something that showed an injustice occurred while they were running as they see fit. She stated she was inclined to answer the Grievance without a hearing.

Member Davies stated when he reviewed this Grievance, he saw room for training, but the EMC doesn't have jurisdiction to mandate employees to take training.

Member Davies stated the Grievance doesn't list where the employee feels they received harm. If the grievant had listed specific details of where he was harmed that he could understand however what was presented in the grievance was not harmful.

Chair Beigel motioned to answer Grievance #7748 for Christian Rowley without a hearing based on the Grievance does not fall within the EMC's jurisdiction pursuant to NAC 284.658(2).

Member Bauer seconds motion.

MOTION: Moved to answer Grievance #7748 for Christian Rowley without a hearing based on the grievance does not fall within the EMC's jurisdiction pursuant to NAC 284.658(2).

BY: Chair Beigel

SECOND: Member Bauer

VOTE: The vote unanimously in favor of the motion.

12. Public Comment

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

13. Adjournment

Chair Beigel concluded the meeting at approximately 11:54 am.