



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
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**Meeting Minutes of the Employee-Management Committee
January 24, 2019**

Held at the Nevada State Library and Archives Building, 100 N. Stewart St., Conference Room 110, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Guy Puglisi - Chair	
Ms. Jennifer Bauer	
Ms. Pauline Beigel	X
Mr. Ron Schreckengost	
Ms. Jennelle Keith	X
Ms. Tonya Laney	
Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	
Ms. Adria White	
Ms. Sonja Whitten	
Ms. Dana Novotny	X

Staff Present:

Ms. Tiffany Breinig, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Ivory Wright-Tolentino, EMC Hearing Clerk

1. Call to Order

Co-Vice-Chair Beigel called the meeting to order at approximately 9:00 am.

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.

Co-Vice-Chair Beigel opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

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

MOTION: Moved to approve the agenda.

BY: Member Russell

SECOND: Member Keith

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

5. Discussion and possible action related to Grievance #6190 Tara Endsley, DHHS, an appeal of a withdrawal of the grievance by Division of Human Resource Management (DHRM) pursuant to NAC 284.693. – Action Item

Co-Vice-Chair Beigel stated she would allow the Committee a few minutes to review the packet.

Co-Vice-Chair Beigel opened the Committee for discussion.

Co-Vice-Chair Beigel stated this was the first time the Committee has seen this form, to remove a grievance from the grievance process.

Co-Vice-Chair Beigel asked if the Committee had any insight or discussion.

Member Keith stated her agency had a similar situation regarding perfumes.

Member Keith stated her agency implemented and ‘unscented’ directive and it is the supervisor’s responsibility to communicate the directive to employees.

Member Keith stated the employee has taken steps to accommodate her working environment.

Co-Vice-Chair Beigel stated the Committee was to determine whether the grievance was withdrawn properly or if it should be reinstated into the grievance process.

Co-Vice-Chair Beigel stated as of now, it was not a grievance, it has been

pulled from the process and this appeal is because the employee wants the grievance to be heard.

Co-Vice-Chair Beigel stated this was not the time for the Committee to determine the actual merit of the grievance, it is to determine if the agency removed the grievance according to NAC 284.658.

Member Russell asked if it mattered that the supervisor in question is the supervisor over the grievant.

Co-Vice-Chair Beigel stated she did not know the answer, and because she did not know the answer, that is why she was questioning if the grievance needed to go back into the grievance process.

Co-Vice-Chair stated she was not sure if the reasoning behind the removal was because it was between two co-workers or if it was an employee-employer relationship.

Co-Vice-Chair Beigel stated there were not many facts that support either side.

Co-Vice Chair Beigel stated if there was a question of the facts, the grievance would be allowed to proceed through the grievance process.

Co-Vice Chair Beigel stated there was not a question as to if the EMC was the correct venue, this is whether the grievance falls under the employee-employer relationship and based on the minimal facts in the grievance, she was unsure if there was enough information to make that determination.

Member Russell stated she feels the grievance should move forward so the EMC has the opportunity to learn the facts.

Member Keith stated she did not feel this was a grievance and it should go back to the agency.

Member Keith stated the agency should work to resolve this.

Member Keith stated it was noted there was a policy, and if the employee were written up, it could be a grievance at that point, but the grievance should be handled by the agency.

Co-Vice-Chair Beigel stated she agreed the grievance should work through the agency.

Co-Vice-Chair Beigel stated there was no response from the agency and the grievance stated the issues began a year ago, so there was no way to tell if it had been taken care of and the Committee couldn't know if anything had been done.

Deputy Attorney General (DAG) Tiffany Breinig stated the grievant

submitted the initial grievance, however, the agency requested that it be removed from the grievance process because the agency determined it was not a grievance.

Ms. Breinig stated the agency sent their request to the Division of Human Resource Management (DHRM) and DHRM reviewed the grievance and determined it was not a grievance.

Ms. Breinig stated on January 4, 2019 DHRM sent a memo stating the request to remove the grievance was approved because it did not meet the definition of a grievance.

Ms. Breinig stated the employee appealed that determination so now before the Committee is the decision of whether the grievance actually meets the definition of a grievance.

Ms. Breinig stated if it does meet the definition of a grievance, it would be put back in the grievance process and pick up where it left off, so the agency would be required to respond and the grievant, depending on that response, can respond.

Ms. Breinig stated if the Committee determined the grievance was *not* a grievance, the Committee would be affirming DHRM's decision to remove the grievance from the grievance process.

Co-Vice-Chair Beigel stated this would be a matter of if the supervisor in question is actually the supervisor over the grievant in any capacity.

Ms. Breinig stated the question is whether the grievance is an actual grievance.

Ms. Breinig stated based on the definition of a grievance per NAC 284.658, it is the Committee's job to determine whether this meets that definition and can proceed in the grievance process, or, if it doesn't meet that definition, the Committee would affirm DHRM's decision to remove it.

Co-Vice-Chair Beigel stated she was unsure if the supervisor was acting as the employer and that is why she was unsure if there were enough facts in the packets to show this was not a grievance.

Member Novotny stated that was her concern as well, the Committee did not know enough about the supervisor and while they may not be a supervisor directly over the employee, they could have some effect on the working conditions which is what NAC 284.658 specifies.

Member Novotny stated in that regard, the supervisor could affect the working conditions and therefore it would be a grievance, but the Committee did not know enough.

Co-Vice-Chair Beigel stated the Committee was to decide if DHRM appropriately removed the grievance or if there is enough merit to call it a grievance.

Member Novotny stated she did not feel the Committee had enough information to dismiss it and the Committee should move it back to the grievance process.

Member Russell stated if she understood correctly, the Committee was in agreement they should put this grievance back in the grievance process at the point it was removed.

Co-Vice-Chair Beigel stated that was what the Committee could do when they vote on it.

Co-Vice-Chair Beigel stated looking at the agenda, the Committee could affirm DHRM's decision to remove the grievance from the grievance process, or the Committee could reverse DHRM's decision and reinstate the grievance at the level of which it was withdrawn.

Co-Vice-Chair Beigel asked if there was any more discussion.

Member Keith asked if the Committee could ask DHRM to clarify their decision.

Co-Vice-Chair Beigel stated yes, the Committee could ask.

Member Keith stated she was looking at the agency request for the removal of grievance form signed by Michelle Garton (DHRM-Supervisory Personnel Analyst).

Member Keith asked Ms. Garton to state to the Committee her reason for removing the grievance based on the grievance did not arise from the employee-employer relationship.

Ms. Garton stated in reviewing the grievance, the relevant statutes and regulations and discussing the grievance with the agency as they submitted the form, it is the agency's position the supervisor, Diane Trematore, does not have any authority the employee.

Ms. Garton stated this was more of a co-worker situation and that Ms. Trematore would have no control over the working conditions as stated in the regulations and statutes that apply.

Co-Vice-Chair Beigel stated when she looks at the form, it only states, 'did not arise out of the relationship' and there is nothing to support what Ms. Garton said regarding the agency's opinion on how the relationship works or an organizational chart.

Co-Vice-Chair Beigel stated she did not see facts that support that information.

Ms. Garton stated the employee stated in her appeal Ms. Trematore is a supervisor, but not the employee's supervisor.

Member Keith stated she did read that on page 2 of the proposed resolution, 'she is a field supervisor as we have minimal to no need for contact'.

Co-Vice-Chair Beigel stated having worked at several different agencies, the structures are all different and supervisors can affect other employees that are not in their direct line of command.

Co-Vice-Chair Beigel stated sometimes people can be 'in charge' if a supervisor is out sick and the Committee doesn't know any of these facts.

Co-Vice-Chair Beigel stated she was concerned with the minimal amount of facts presented for removing the grievance from the process.

Co-Vice-Chair Beigel asked if there was any more discussion.

Member Keith stated she wondered if mediation between the two employees would be more appropriate than the grievance process.

Member Keith stated she understood there was not a lot of information and the Committee should not make assumptions.

Co-Vice Chair Beigel asked if anyone was ready to make a motion.

Member Keith made a motion the grievance be held and not reversed at this time and recommend the grievance go back to the agency for mediation or a resolution process within the agency.

Co-Vice Chair Beigel asked for clarification as to whether Member Keith was moving to affirm DHRM's decision or reverse it.

Member Keith stated she moved to affirm DHRM's decision based on the Committee cannot confirm a direct correlation between the employee-employer relationship.

Member Keith stated in the memo from Michelle Garton, dated January 8, 2019, under the determination it states a 'grievance is an act, omission or occurrence' quoting the NAC and the last sentence states 'this matter is between co-workers it does not meet the definition of a grievance.'

Member Keith stated with that statement, the grievance is between co-workers, not a supervisor and employee relationship.

Ms. Breinig asked Member Keith to restate her motion.

Co-Vice-Chair Beigel restated the motion and asked if there was a second.

There was no second, the motion failed.

Co-Vice-Chair Beigel moved to reverse the decision of DHRM and reinstate the grievance based on the Committee not having enough facts to determine the employee-employer relationship.

Member Russell seconded.

Member Keith asked if, with that motion, the agency would get a chance to address the situation in a grievance form but not necessarily a hearing.

Co-Vice-Chair Beigel stated if the Committee reversed the decision to remove the grievance, it goes back to the level where it was withdrawn.

Co-Vice-Chair Beigel stated this would not guarantee there would be a hearing, the parties would still be able to do mediation before the grievance gets to the hearing stage.

Co-Vice Chair Beigel asked if there was any other discussion on the motion, there was none.

The vote was unanimous to reverse the decision of DHRM and reinstate grievance #6190 to the point at which it was withdrawn.

MOTION: Moved to reverse the decision of DHRM and reinstate grievance #6190 to the point at which it was withdrawn.

BY: Co-Vice-Chair Beigel

SECOND: Member Russell

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

6. Discussion and possible action related to Grievance #5932 of Michael Kolpak, Department of Public Safety – Action Item

Co-Vice-Chair Beigel stated she would allow the Committee a few minutes to review the packet.

Co-Vice-Chair Beigel opened the Committee for discussion.

Member Russell stated she understands the concerns brought forth by the grievant, but other than the Committee's ability to look into whether the candidates that were promoted to the new positions were qualified, she didn't feel the Committee had jurisdiction.

Member Russell stated she did not have specific decision numbers, but there have been numerous decisions the Committee has made where the Committee cannot substitute their judgment for the judgement of the panel of the hiring and promotion process.

Co-Vice-Chair Beigel agreed.

Member Novotny stated the grievant requested a proposed resolution of a promotion to DPS Sergeant, which the Committee can't grant, or to see the qualifications reviewed by an outside agency, which the Committee can't grant.

Co-Vice-Chair Beigel asked if Member Novotny was saying the grievant's resolution is something the Committee cannot grant, but that is not necessarily the only factor the Committee looks at to determine if a grievance can move forward.

Co-Vice-Chair Beigel stated she did agree, it was not something the Committee could grant but agreed with Member Russell that there have been other hearings where a grievance was denied hearing.

Co-Vice-Chair Beigel stated DHRM reviewed the list, and it is not the Committee's job to review qualifications.

Co-Vice-Chair Beigel stated it was not up to the Committee to remove the confidentiality requirement on recruitment or interview lists.

Member Keith stated she agreed and felt the Committee did not have jurisdiction over the process.

Member Keith stated DHRM reviewed the qualifications and the grievant did mention preferential treatment to the four females which could mean gender discrimination and that would not be something the Committee could determine.

Member Novotny stated the grievant did not disagree the candidates were minimally qualified, but the problem was they *only* met the minimum qualifications.

Co-Vice-Chair Beigel stated when an agency is doing internal promotions, once a candidate is on the list, all candidates are on an even playing field.

Co-Vice-Chair Beigel stated what you say during the interview, and that experience does count, however, a person could show up with the most experience but not be the best fit.

Member Keith stated having been on multiple interview panels, she agreed with Co-Vice-Chair Beigel that a candidate's presentation and how they perform in the interview has a lot to do with how a person will fit with a team and there is much more to look at overall, not just the minimum qualifications.

Member Russell stated it is not just the minimum qualifications, but how

the prospective candidate will fit in to the staffing dynamics.

Member Russell stated she did not see how the Committee could substitute its judgment for that.

Member Russell stated she feels for the grievant and acknowledged the Committee is not limited to the proposed resolutions but cannot see what the Committee could do taking into consideration previous decision and the circumstances for this grievance.

Member Novotny stated there was a letter in the grievance that stated the agency had referred the issue to the Equal Employment Opportunity (EEO) for review and if the grievant is claiming discrimination, that is where the grievance should be reviewed.

Member Russell stated the letter dated October of 2016 from Chief Natalie Wood is what the Committee would have recommended as discrimination does not fall within the EMC's jurisdiction.

Member Russell stated it appeared the grievance was on the proper route to the appropriate venue.

Co-Vice-Chair Beigel stated this could fall under NAC 284.658 where the EMC lacks jurisdiction due to the wrong venue.

Co-Vice-Chair Beigel asked if there was more discussion.

Member Keith stated she would like to discuss the memo from Chief Natalie Wood.

Member Keith stated with that memo, the agency addressed the gender discrimination process and had also given the grievant reason why the other candidates were promoted and addressed the qualifications.

Member Keith stated with the qualifications and experience, which is not necessarily a factor in the process, she did not see anything else the Committee could do.

Member Novotny moved to dismiss the grievance based on the EMC is the wrong venue for this grievance to be heard.

Co-Vice-Chair Beigel stated the motion could be stated as 'the grievance does not fall within the EMC's jurisdiction'.

Member Novotny corrected her motion with 'the grievance does not fall within the EMC's jurisdiction.

Co-Vice-Chair Beigel repeated Member Novotny's motion and asked if there was any discussion on the motion, there was none.

Member Russell seconded Member Novotny's motion.

The vote was unanimous in favor of the motion.

MOTION: Moved to deny hearing for grievance #5932 as the grievance does not fall within the Committee's jurisdiction.

BY: Member Novotny

SECOND: Member Russell

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

7. Public Comment

There were no comments in the North or in the South.

8. Adjournment

Co-Vice-Chair Beigel adjourned the meeting at approximately 9:49 am.