



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
October 12, 2017

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3138, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 4406, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler–Chair	X
Ms. Pauline Beigel	
Mr. Guy Puglisi	
Ms. Sandie Ruybalid	
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	X
Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	
Ms. Sherri Thompson	X
Ms. Adria White	X
Ms. Sonja Whitten	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Zina Cage, Hearing Clerk

1. Chair Mandy Hagler called the meeting to order at approximately 9:00 a.m.
2. **Public Comment**

There were no comments from the audience or Committee Members.
3. **Adoption of the Agenda – Action Item**

Chair Hagler requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.
BY: Member Jennifer Bauer
SECOND: Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

4. Approval of Minutes for August 10, 2017 – Action Item

Chair Hagler requested a motion to adopt the minutes.

MOTION: Moved to approve the minutes.
BY: Member Jennifer Bauer
SECOND: Member Adria White
VOTE: The vote was unanimous in favor of the motion.

Chair Hagler opened the meeting with committee introductions.

Chair Hagler stated grievance #5073 of Justin Curry, Department of Health and Human Services, had been withdrawn and was stricken from the agenda.

5. Discussion and possible action related to Grievance #4406 of Peter Hachikian, Department of Business and Industry, Taxicab Authority – Action Item

This matter was heard before the Employee-Management Committee (“EMC”)¹ on October 12, 2017, pursuant to NAC 284.695 and NAC 284.6955, regarding a grievance filed by Peter Hachikian (“Mr. Hachikian” or “Grievant”). Grievant was present in Pro Per. The State of Nevada, Department of Business and Industry, Nevada Taxicab Authority (“Authority”) was represented by Senior Deputy Attorney General Theresa Harr.

Mr. Hachikian stated he did not submit packets. The Authority did submit packets, and there were no objections to the exhibits. Authority Administrator Ronald Grogan (“Administrator Grogan”) and Grievant were sworn in and testified at the hearing.

STATEMENT OF THE CASE

Grievant filed his grievance in order to contest a written reprimand the Authority issued for Grievant’s violation of the Authority’s electronic mail policy (Policy # 107).

Grievant opened by apologizing for spending taxpayer money on his grievance, and then stated in substance that he was offering no excuses

¹ The EMC members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt.), who chaired the meeting; Sherri Thompson (DETR), Jennifer Bauer (SPCSA) and Adria White (UNR). EMC Coordinator, Nora Johnson and Counsel for the EMC, Deputy Attorney General Robert A. Whitney, were also present.

for what had occurred. Grievant further stated in substance that the written reprimand that he was given had nothing to do with sending emails, but with perceived power and control by the Authority.

The Authority explained in substance that Mr. Hachikian received a written reprimand because he violated the Authority's email policy. The Authority stated in substance that the email policy which grievant violated (Policy # 107) stated that office-wide emails needed to be for official business purposes and be of particular interest to all emails users at the Authority. The Authority alleged in substance that Grievant's email did not meet these parameters, and that in fact some Authority employees had been concerned that they received Mr. Hachikian's email. The Authority concluded by stating that the written reprimand issued to Grievant was proper.

Administrator Grogan testified in substance that he was familiar with the Authority's email policy. Administrator Grogan noted in substance that the particular policy which Grievant had violated, Policy # 107, provided that emails addressed to the entire Authority needed to be of general interest to the entire population at the Authority and for official business purposes, and that if there was any question as to the validity of the email the employee who wanted to send the email should consult with him before sending it.

Administrator Grogan also testified in substance that on March 24, 2016, the Grievant sent an Authority wide email advising of the perils of not shaking hands of other employees at the Authority. Administrator Grogan stated in substance that he thought this email was inappropriate, and that other Authority employees had come to him concerned about Grievant's email. Administrator Grogan testified in substance that Grievant was issued a written reprimand as a result of sending the March 24, 2016 email.

FINDINGS OF FACT

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

1. Grievant is a Compliance Enforcement Investigator with the Authority.
2. The Authority has written policies concerning the use of email.
3. Authority Policy # 107 states in substance that Office-wide emails must be of particular interest to all email users at the Authority and for official business purposes.
4. If an Authority employee had any questions or concerns about sending an Authority wide email, the employee was to seek approval via his or her chain of command.
5. There are limited exceptions to this policy, such as announcements of special events, such as baby showers.
6. On March 24, 2016, Grievant sent an Authority wide email.

7. The email Grievant sent concerned that a matter that was not of Office-wide interest, and was not for official business purposes, and in fact concerned Grievant's thoughts on a letter or instruction which he had been issued concerning allegations of Grievant not shaking hands with another Authority employee.
8. It was determined by the Authority that Grievant's email violated email Policy # 107.
9. The Authority issued Grievant a written reprimand on May 4, 2016, for violating email Policy # 107.

CONCLUSIONS OF LAW

1. For this grievance, it was Mr. Hachikian's burden to establish that the Authority's decision that he violated the Authority's email policy was contrary to law, or that the decision was arbitrary and capricious, or an abuse of discretion. NRS 233B.135.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. 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 and employer and employee. NRS 284.384(6).
4. Mr. Hachikian's grievance falls within the EMC's jurisdiction under NRS 284.073(1)(e).
5. The Authority has the discretion to conduct and manage its affairs as it sees fit. See NRS 284.020.
6. The Authority had the right to establish a policy concerning the use of emails.
7. The Authority did in fact establish a policy concerning the use of emails, Policy # 107.
8. Pursuant to NAC 284.650, the Authority had the right to discipline its employees for various reasons.
9. Pursuant to NAC 284.638, the Authority had the authority to issue Mr. Hachikian a written reprimand.
10. Grievant failed to meet his burden of proving that the written reprimand issued by the Authority on May 6, 2016 for Grievant sending his March 24, 2016 Authority wide email was arbitrary and capricious, or unsupported by substantial evidence, or was an abuse of discretion.

DECISION

Based upon the evidence in the record, and the foregoing findings of fact and conclusions of law, and good cause appearing therefor. It is hereby **ORDERED**:

Mr. Hachikian's grievance is hereby **DENIED**.²

²Member Bauer's motion was seconded by Member Thompson and carried by a unanimous vote.

MOTION: Moved to deny grievance #4406 based of insufficient evidence and ability to prove violation of agency policy #107 of the Taxicab Policy Manual
BY: Member Jennifer Bauer
SECOND: Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

6. Discussion and possible action related to Grievance #5059 of Peter Hachikian, Department of Business and Industry, Taxicab Authority - Action Item

This matter was heard before the Employee-Management Committee (“EMC”)³ on October 12, 2017, pursuant to NAC 284.695 and NAC 284.6955, regarding a grievance filed by Peter Hachikian (“Mr. Hachikian” or “Grievant”). Grievant was present in Pro Per. The State of Nevada, Department of Business and Industry, Nevada Taxicab Authority (“Authority”) was represented by Senior Deputy Attorney General Theresa Harr.

Mr. Hachikian stated he did not submit packets. The Authority did submit packets, and there were no objections to the exhibits. Authority Administrator Ronald Grogan (“Administrator Grogan”) and Grievant were sworn in and testified at the hearing.

STATEMENT OF THE CASE

Grievant filed Grievance #5059 on May 13, 2017 in order to contest his annual employee appraisal dated April 7, 2017. Grievant stated in substance that there was a quota, or secret number of long haul citations that the Authority required its officers to write. Grievant argued in substance that if there was no quota then writing five citations for long hauling, the number of long haul citations written by Grievant during his evaluations period, should have been sufficient. Grievant added in substance that the only thing the Authority had to do for him to drop his grievance was to disclose the number of long haul citations it was requiring its officers to write. Moreover, Grievant argued in substance that without an actual number of long haul citations required by the Authority, there was no actual number to judge him with. Additionally, Grievant denied ever threatening a civil lawsuit.

The Authority argued in substance that pursuant to NAC 284.470, an employee’s supervisor conducts his or her annual appraisal. The Authority further stated in substance that NAC 284.470 states what the roles of the various people involved in an employee’s appraisal are, what must be reviewed in an appraisal, and how to appeal an appraisal if an employee disagrees with it.

³ The EMC members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt.), who chaired the meeting; Sherri Thompson (DETR), Jennifer Bauer (SPCSA) and Adria White (UNR). EMC Coordinator, Nora Johnson and Counsel for the EMC, Deputy Attorney General Robert A. Whitney, were also present.

The Authority noted in substance that Grievant was contesting Job Element Number 1, which was the only job element where Grievant fell below standards in his appraisal. The Authority stated in substance that all its other investigators averaged writing twenty eight (28) long haul citations per year, while Grievant had written five (5) long haul citations over his year-long appraisal period. The Authority also argued in substance that there was no secret quota for writing long haul citations, but that when comparing Grievant's performance with his peers' performance, Grievant was woefully underperforming.

The Authority stated in substance that Grievant had sought and received a second review of his employee appraisal, which said in substance that Grievant's initial review was accurate. The Authority also argued in substance that the EMC does not supervise Grievant, and so pursuant to statute cannot adjust the contents of Grievant's appraisal, and that the Authority complied with statutory and legal requirements when performing Grievant's evaluation.

Administrator Grogan testified in substance that he was the Administrator at the Authority, and that he was familiar with the legal requirements for annual employee appraisals. Administrator Grogan stated in substance that the basic premise of an annual appraisal was to let an employee know how he or she was performing on the job. Administrator Grogan indicated in substance that Grievant's overall evaluation was rated as satisfactory, but that there was one job element where Grievant was rated below standard, Compliance Enforcement Activities, long haul enforcement.

Administrator Grogan testified in substance that long haul enforcement was made a separate item on Authority employee evaluations because the State Legislature had put an emphasis on long haul enforcement in the Legislative 2013 session, and that the Authority had received additional resources to increase long haul enforcement. Administrator Grogan also noted in substance that every Authority officer had the long haul enforcement element in his or her evaluation. Administrator Grogan also testified in substance that Grievant had received a second review of his performance after filling out a request for a second review, and that the initial performance review of Grievant had been upheld.

Administrator Grogan, in response to questioning, testified in substance that Grievant had not been assigned to any special projects during the period of time evaluated that might have taken him away from his enforcement duties, and that Grievant's job was full time patrol.

FINDINGS OF FACT

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

1. Grievant is a Compliance Enforcement Investigator with the Authority.
2. That the State has criteria set out in regulation (NAC Chapter 284) for the processing of employee appraisals.
3. That the Grievant failed to show that the Authority had failed to comply with the appraisal process set forth in regulation.
4. It was also noted that there was no evidence presented in Grievant's work performance standards that the Authority was rating Grievant on his appraisal based on a quota of citations he needed to write.

CONCLUSIONS OF LAW

1. Grievant had the burden to prove that the Authority's decision to rate him below standards in Job Element 1 was contrary to law, or that the decision was arbitrary and capricious, or an abuse of discretion. NRS 233B.135.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. 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 and employer and employee. NRS 284.384(6).
4. Mr. Hachikian's grievance falls within the EMC's jurisdiction under NRS 284.073(1)(e).
5. The Authority has the discretion to conduct and manage its affairs as it sees fit. See NRS 284.020.
6. Grievant's employee appraisal was performed in accordance with legal requirements.
7. Grievant did not meet his burden to show that the does not meet standards rating he received in his employee appraisal dated April 7, 2017 was contrary to law, or that the decision was arbitrary and capricious, or an abuse of discretion.

DECISION

Based upon the evidence in the record, and the foregoing findings of fact and conclusions of law, and good cause appearing therefor. It is hereby ORDERED:

Mr. Hachikian's grievance is hereby **DENIED**.⁴

MOTION: Moved to deny grievance #5059 based on lack of jurisdiction, and lack of evidence in the Work Performance Standards of a quota requirement.

BY: Member Jennifer Bauer

⁴Member Bauer's motion was seconded by Sherri Thompson and carried by a unanimous vote.

SECOND: Member Sherri Thompson

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

7. Discussion and possible action related to Grievance #5049 of Susan Dopazo, Department of Health and Human Services – Action Item

This matter was heard before the Employee-Management Committee (“EMC”)⁵ on October 12, 2017, pursuant to NAC 284.695 and NAC 284.6955, regarding a grievance filed by Susan Dopazo (“Ms. Dopazo” or “Grievant”). Grievant was present in Pro Per. The State of Nevada, Division of Welfare and Support Services (“DWSS”) was represented by Renee Depaoli.

Both parties submitted exhibits, and there were no objections to the exhibits. DWSS Social Services Manager IV Robyn Painter (“Manager Painter”), DWSS Family Services Supervisor I Rosie Mendoza (“Supervisor Mendoza”), DWSS Social Services Manager V Robert Thompson (“Manager Thompson”) and Grievant were sworn in and testified at the hearing.

STATEMENT OF THE CASE

Grievant filed her grievance in order to contest an amended oral warning (hereinafter referred to as “written warning”) reduced to writing that she received on April 25, 2017. Grievant testified in substance that she was saddened to be at the grievance hearing, and that events cited in the written warning she received were taken out of context or distorted. Grievant denied ever saying to Manager Painter that she lied about the Family Service Specialist position that Grievant had applied for, but stated she said to Manager Painter that she had evidence that said otherwise. Grievant also denied that she told Manager Painter that she had been promised the FSS position.

Grievant also testified about a letter of instruction (“LOI”) concerning her behavior which she had received prior to receiving the written warning at issue in her grievance. Grievant stated in substance that the incident resulting in the LOI had taken place on January 11, 2016, and that her previous manager had addressed that matter with her. Grievant stated in substance that Manager Painter had re-opened that matter and embellished it to justify moving the Grievant from her current position to another position.

Grievant further testified in substance that she would never point her finger in anyone’s face, and that she called Manager Thompson because she was afraid that Manager Painter was going to fire her. Grievant

⁵ The EMC members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt.), who chaired the meeting; Sherri Thompson (DETR), Jennifer Bauer (SPCSA) and Adria White (UNR). EMC Coordinator, Nora Johnson and Counsel for the EMC, Deputy Attorney General Robert A. Whitney, were also present.

stated in substance that she spoke to Manager Thompson, but that his only response was to think about how she acted when she became upset.

Grievant also stated that she had been told that the written warning would remain in her file.

DWSS stated in substance that the agency acted appropriately in carrying out the written warning which it issued to Grievant, and that the placement of the written warning in Grievant's file was done in accordance with policy and procedure, and DWSS did not act in an arbitrary and capricious manner in the handling of the written warning issued to Grievant.

DWSS further noted in substance that on March 28, 2017, Grievant had exhibited behavior that fell outside of what DWSS had the right to expect, so that issuing the written warning to Grievant was appropriate. DWSS stated in substance that the discipline it had imposed on Grievant was the lowest level of discipline that DWSS could impose, and that Grievant was a valued employee. DWSS also stated in substance that it was DWSS policy to ensure that staff respected both clients and other staff.

Manager Painter testified in substance that at approximately 11:30 am on March 28, 2017, Grievant came to her office to discuss an application Grievant had recently submitted for an FSS position and Grievant's non-selection for that position. Manager Painter stated in substance that Grievant asked her if she was blocking Grievant from the FSS position. Manager Painter indicated in substance that she responded by stating that Grievant was interviewed and not selected for the position, which happened sometimes, to which Manager Painter stated Grievant responded with "that's a lie." Manager Painter further testified in substance that she attempted to explain to Grievant that selection for a position was not final until a person was offered the position, but that Grievant was angry after stating "that's a lie."

Manager Painter stated in substance that she had a follow up meeting on March 28, 2017, in Supervisor Mendoza's office. Manager Painter indicated that Grievant was still angry at the follow up meeting, and would not allow her to finish her sentences before interrupting her. Manager Painter stated in substance that she tried to reassure Grievant that selection for the FSS position might not happen the first time, and that both she and Supervisor Mendoza tried to calm down Grievant.

Manager Painter testified in substance that at some point during the second follow up meeting Grievant walked out, but kept coming back in the door to Supervisor Mendoza's office. Manager Painter indicated in substance that Grievant was still angry, pointing her finger at her, and staying close to her. Manager Painter in substance described Grievant's behavior as highly unprofessional, sarcastic, and rude.

Manager Painter testified in substance that she threatened to call security because Grievant kept coming back into Supervisor Mendoza's office unannounced, then Manager Painter would close the door, but Grievant would continue opening the door, which would hit Manager Painter, and that Grievant hit her with the door three times, and at one point Grievant told Manager Painter to keep her voice down.

Supervisor Mendoza testified in substance that she had provided coaching to Grievant three to four times prior to March 28, 2017, with respect to Grievant's behavior at work. Supervisor Mendoza further testified in substance that on March 28, 2017, in her office, Manager Painter tried to discuss with Grievant her not being chosen for the FSS position. Supervisor Mendoza stated in substance that at first Grievant was upset, and then Grievant's demeanor became aggressive when Supervisor Mendoza and Manager Painter did not listen to Grievant's version of events, and that Grievant's physical gestures were aggressive, and that her behavior was unprofessional.

Manager Thompson testified in substance that he was contacted by Grievant on March 28, 2017. Manager Thompson stated in substance that he received approximately seven telephone calls and emails from Grievant over a ninety (90) minute time period on March 28, 2017. Manager Thompson also indicated in substance that his secretary received two telephone calls from Grievant because he was unavailable to speak to Grievant.

Manager Thompson testified in substance that he spoke to Grievant on March 28, 2017 as soon as he was able to. Manager Thompson stated in substance that Grievant wanted to speak to him before Manager Painter or Supervisor Mendoza did, and told him that that a promotion recently given to Grievant had been reversed because of Manager Painter's actions.

Manager Thompson indicated in substance that Grievant, on her call with him, was curt, aggressive, and unprofessional. Manager Thompson also testified in substance that Grievant stated to him over the phone that she did not talk over Manager Painter or get into arguments with Manager Painter or Supervisor Mendoza, but that she was acting that way towards him, and that it was his observation that when Grievant became excited she did not remain professional.

FINDINGS OF FACT

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

1. Grievant is employed by DWSS, and was employed by DWSS on March 28, 2017.

2. Grievant was given multiple chances to maintain professional conduct prior to March 28, 2017, including attempts at coaching Grievant with respect to her behavior.
3. The amount of time between the chances Grievant was given to maintain professional conduct and the time the written warning was issued was a reasonable amount of time for Grievant to maintain professional conduct.
4. Grievant engaged in unprofessional conduct on March 28, 2017, that justified the issuance of the written warning.
5. That a written warning was the lowest possible form of discipline that DWSS could have issued to Grievant.
6. Grievant did not show where DWSS violated its policy and procedure in issuing the written warning which it issued to Grievant on April 25, 2017, for the March 28, 2017 incidents.

CONCLUSIONS OF LAW

1. For this grievance, Ms. Dopazo had the burden to establish that DWSS' decision to issue her a written warning was contrary to law, or that the decision was arbitrary and capricious, or an abuse of discretion. NRS 233B.135.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. 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 and employer and employee. NRS 284.384(6).
4. Ms. Dopazo's grievance falls within the EMC's jurisdiction under NRS 284.073(1)(e).
5. DWSS has the discretion to conduct and manage its affairs as it sees fit. See NRS 284.020.
6. Pursuant to NAC 284.650, DWSS had the right to discipline its employees for various reasons.
7. Pursuant to NAC 284.638, DWSS had the authority to issue Ms. Dopazo a written warning.
8. Grievant failed to meet her burden of proving that the written warning issued by the Authority on April 25, 2017 for Grievant's unprofessional conduct on March 28, 2017 was arbitrary and capricious, or unsupported by substantial evidence, or was an abuse of discretion.

DECISION

Based upon the evidence in the record, and the foregoing findings of fact and conclusions of law, and good cause appearing therefor. It is hereby **ORDERED**:

Ms. Dopazo's grievance is hereby **DENIED**.⁶

⁶Member Bauer's motion was seconded by Member Thompson and carried by a unanimous vote.

MOTION: Moved to deny grievance #5049 based on the agency properly coached the employee and provided the opportunity to correct the behavior before issuing the oral warning, in accordance with state regulations and agency policy.

BY: Member Jennifer Bauer

SECOND: Member Sherri Thompson

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

9. Public Comment

There were no comments from the audience or Committee Members.

10. Adjournment

Chair Hagler adjourned the meeting at approximately 10:59 am.