



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
November 12, 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 1400, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	
Ms. Mandy Payette–Co-Vice-Chair	X
Ms. Bonnie Long	
Ms. Claudia Stieber	X
Ms. Allison Wall	
Ms. Michelle Weyland	

Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	
Ms. Donya Deleon	
Mr. Tracy DuPree	
Mr. David Flickinger	X
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. Co-Vice-Chair Mandy Payette:** Called the meeting to order at approximately 9:00 a.m.

2. Public Comment

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

3. Adoption of the Agenda – Action Item

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

MOTION: Moved to approve the adoption of the agenda.

BY: Committee Member Claudia Stieber

SECOND: Committee Member David Flickinger

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

4. Adjustment of Grievance of Robert Fisher, #3220, Department of Agriculture – Action Item

An Amended Motion to Dismiss was submitted to the Employee-Management Committee (“EMC” or “Committee”) by the agency employer Department of Agriculture (“NDA”) which was represented by Deputy Attorney General Cameron Vandenberg (“Ms. Vandenberg”). Robert Fisher (“Mr. Fisher” or “Grievant”) was present and was represented by Kenneth McKenna (“Mr. McKenna”). The exhibits submitted to the EMC prior to the hearing were marked for entry. There were no objections to the exhibits.

NDA argued that the EMC lacked jurisdiction to hear the grievance on two grounds: 1) Grievant’s discrimination claims were being investigated by the State of Nevada Sexual Harassment, Discrimination Investigation Unit (“SHDIU”) and the Nevada Equal Rights Commission (“NERC”); and 2) Grievant’s issues regarding the qualifications of the person for the position that Grievant applied for are not properly asserted against the NDA.

Mr. McKenna argued that NDA failed to follow the requirements of the regulations outlined in NRS 284.295(1) because NDA had failed to take into account Mr. Fisher’s length of service. Mr. McKenna further argued that Mr. Fisher was not asserting any equal rights or harassment claims through his grievance and thus NDA’s first argument was inapplicable.

NDA agreed that if Mr. Fisher was not asserting equal rights claims, the first argument regarding the Committee lacking jurisdiction because of a concurrent investigation by SHDIU or NERC was moot. NDA argued that NRS 284.295 was a directive to the Personnel Commission to draft regulations that take into account criteria such as the length of service of potential employees. NDA also argued that the length of service was considered prior to the interview stage.

The Committee reviewed the documents submitted, considered the arguments presented and deliberated on the record. Committee Member Claudia Steiber stated that upon her review of NRS 284.295, she did not see that an agency or appointing authority was compelled to consider years of service and that by an agency receiving a list of applicants, the directive had been met; and that it was not incumbent upon an agency to verify the statute had been complied with.

Mr. McKenna argued that the Amended Motion to Dismiss should be denied on res judicata grounds because the original Motion to Dismiss at the September 18, 2014 hearing had been denied. McKenna asked the Attorney General for clarification on the ruling of the prior Motion to Dismiss hearing.

Deputy Attorney General Greg Ott stated that the original Motion to Dismiss at the prior hearing had not been denied, and further, that the Amended Motion to Dismiss heard at the present hearing was made on new and different grounds than the original motion and that the argument that was being considered by the EMC was not present in the original motion and thus had not been considered by the September 18, 2014 Committee.

Co-Vice-Chair Payette stated that her recollection of hearing the audio recording of the prior hearing was that there was not a ruling made, and further, that the original Motion to Dismiss was strictly based on discrimination. Co-Vice-Chair Payette additionally stated that the Committee was in consideration of the Amended Motion to Dismiss in its assertion that the matter of review of the certified list fell under the purview of Division of Human Resource Management.

MOTION: Moved to grant the amended motion to dismiss on the basis that grievance is not within the EMC's jurisdiction per NAC 284.695.
BY: Committee Member Claudia Stieber
SECOND: Committee Member David Flickinger
VOTE: The motion passed with a 3:1 majority vote. Co-Vice-Chair Mandy Payette and Committee Members Claudia Stieber and David Flickinger voted for, and Committee Member Sherri Thompson voted against.

5. Discussion and possible action related to motion to dismiss of Grievance #2994 of Clint Felton, submitted by the Department of Transportation, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee by the agency employer Department of Transportation (“NDOT”) which was represented by Deputy Attorney General David R. Keene (“Mr. Keene”). Clint Felton (“Mr. Felton” or “Grievant”) was present in proper person.

NDOT argued that the Committee lacked jurisdiction to hear the grievance because the Committee had already rendered a decision on a similar grievance in EMC Decision 06-14. Mr. Keene stated that because the present grievance dealt with the same factual and legal allegations as those resolved in Decision 06-14, the doctrine of res judicata applied. Mr. Keene additionally argued that the remedy Grievant requested could not be granted because information regarding the application, review process, and such information was confidential; and Grievant's request for a negotiated settlement could not be done before the EMC.

Mr. Felton argued in substance that his grievance addressed concerns of favoritism and nepotism within NDOT. Mr. Felton also stated that he had additional evidence and wanted the hearing to go forward.

Co-Vice-Chair Payette stated in substance that the EMC had not received any opposition from Mr. Felton prior to the hearing on the Motion to Dismiss, and any evidence would be provided during a hearing if the Motion to Dismiss were to be denied and would be subject to objection by NDOT.

The Committee reviewed the documents submitted, considered the arguments presented and deliberated on the record.

MOTION: Moved to grant the motion to dismiss because the EMC lacked jurisdiction to proceed under NAC 284.695.

BY: Committee Member David Flickinger

SECOND: Committee Member Sherri Thompson

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

6. Discussion and possible action related to motion to dismiss of Grievance #3088 of Rocky Boice, submitted by the Department of Transportation, supporting documentation, and related oral argument, if any – Action Item

The Committee and the parties agreed to combine agenda items 6 and 7 and hear grievance numbers 3088 and 3148 together.

7. Discussion and possible action related to motion to dismiss of Grievance #3148 of Rocky Boice, submitted by the Department of Transportation, supporting documentation, and related oral argument, if any – Action Item

NDOT was represented by Deputy Attorney General David R. Keene (“Mr. Keene”). Rocky Boice (“Mr. Boice” or “Grievant”) was present in proper person and accompanied by Ahrien Johnson (“Mr. Johnson”) Union Representative from the American Federation of State, County and Municipal Employees (“AFSCME”) Local 4041.

Grievant agreed to Co-Vice-Chair Payette’s request to combine grievance numbers 3088 and 3148 into one motion to dismiss from employer NDOT.

NDOT argued that the EMC lacked jurisdiction to hear grievances 3088 and 3148 because the requested remedy was discipline of another employee and it was well established that the Committee lacked the ability to discipline other employees.

Mr. Boice stated that he did not want to be penalized for any lack of understanding of the law. Mr. Boice argued that it was the right of the Committee to agree or disagree with elements of the case and to render applicable remedies but that it could only do so by hearing the grievance. Mr. Boice stated that he wished for the hearing to move forward so that the matters may be resolved.

The Committee reviewed the documents submitted, considered the arguments presented and deliberated on the record. Committee Member Stieber stated that

the members of the Committee were state workers like Mr. Boice who encountered challenges in understanding the legal aspects of grievances and that they were sympathetic to Mr. Boice in his understanding of that area; and of employees finding difficulty in determining the right venue for their complaint to be heard. Committee Member Steiber further stated that based on the NAC, the Committee did not have jurisdiction to grant what Mr. Boice was seeking. Co-Vice-Chair Payette seconded that she was sympathetic to Mr. Boice and that while he may believe the EMC had a right to hear the grievance, and some members would hear all grievances if they could, the EMC was governed by regulations and as such, the Committee would review whether or not it had jurisdiction to hear a grievance. Co-Vice-Chair Payette noted that in 1995, the Attorney General gave an opinion that the EMC did not have jurisdiction to take disciplinary action against employees; that it was within the purview of the agency. Committee Member Sherri Thompson stated she was in agreement with the comments made by Committee Member Steiber and Co-Vice-Chair Payette.

MOTION: Moved to grant the motion to dismiss for grievances #3088 and #3148 because based upon NAC 284.695, the EMC lacked jurisdiction to grant the requested remedies.

BY: Committee Member Claudia Stieber

SECOND: Committee Member David Flickinger

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

8. Adjustment of Grievance of Rocky Boice, #3207, Department of Transportation – Action Item

The agency employer NDOT was represented by Mr. Keene. Grievant was present in proper person with assistance from Mr. Johnson.

The exhibits submitted to the Employee-Management Committee prior to the hearing were marked and submitted without objection. Mr. Boice and NDOT Personnel Officer III Kimberley King were duly sworn and appeared at the hearing.

Grievant argued he filed a whistleblower complaint regarding his demotion and was granted a hearing on that whistleblower issue. Mr. Boice stated that he had an additional hearing regarding an involuntary transfer that was scheduled in succession with the whistleblower hearing. Grievant stated he had requested a total of 16 hours of administrative leave to prepare for his two hearings, 8 for each hearing. Grievant stated he was granted 8 hours of administrative leave to prepare for the hearing regarding the involuntary transfer, but denied 8 hours of administrative leave to prepare for his whistleblower hearing. Grievant stated that through his grievance, he requested that the decision to deny him 8 hours of administrative leave regarding his whistleblower complaint be overturned and that he be granted an additional 8 hours of administrative leave for a total of 16 hours for the two hearings.

The parties agreed that the whistleblower and the involuntary transfer hearings were separate hearings with separate decisions, but that they were heard by the same hearing officer. The parties also agreed upon the leave that was granted

regarding the two hearings: Grievant was granted 8 hours of administrative leave to prepare for the involuntary transfer hearing and granted 8 hours of administrative leave to attend the involuntary transfer hearing; Grievant was not granted administrative leave to prepare for the whistleblower hearing and was granted 8 hours of administrative leave to attend the whistleblower hearing.

Kimberley King testified that Grievant was denied administrative leave to prepare for his whistleblower hearing because that hearing was not regarding a demotion or an involuntary transfer and thus NAC 284.589 did not apply. Ms. King stated that Mr. Boice was employed as a Maintenance Worker III and that he was given a trial/probationary period as a Highway Maintenance Worker IV but that he did not successfully complete the trial/probationary period and was reverted to his former position of Maintenance Worker III. NDOT sought to admit additional evidence in response to Mr. Boice's allegations that his whistleblower hearing was based on a demotion, however, Mr. Boice objected to the additional evidence on the basis that they had not had opportunity to review the material. The objection was sustained and the evidence was not admitted.

The EMC reviewed the evidence; considered the statements of the witnesses and the arguments of counsel, and the parties; and deliberated on the record. Committee Member Claudia Stieber asked Mr. Boice if he was granted administrative leave for the whistleblower hearing. Mr. Boice responded that he was granted administrative leave for the hearing itself, while he had attended the hearing. Committee Member Thompson noted that the regulation was specific and the whistleblower was not addressed. Committee Member Stieber stated she did not find any statute or regulation which would've required NDOT to provide administrative leave for Mr. Boice to prepare for his whistleblower hearing. Committee Member Sherri Thompson stated that she was in agreement with Committee Member Stieber that it was not in the regulations to make the agency give Grievant administrative leave for that purpose. Committee Member David Flickinger stated that he questioned the fact that Mr. Boice was granted administrative leave to attend the whistleblower hearing, and further questioned when he considered that the regulation stated it allowed for preparation for "all hearings" regarding items mentioned in Grievant's whistleblower complaint of demotion, and so forth. Committee Member Flickinger asked Mr. Boice if he had received a total of three days of administrative leave and if the days were consecutive. Mr. Boice responded that he had received a total of three days of administrative leave and that the last two days were consecutive. Mr. Boice continued and stated his point of argument which NDOT objected to on the basis that the statement was further testimony. The objection was sustained. Co-Vice-Chair Payette remarked of the civility and respect both parties had shown during the hearing and thanked them. Co-Vice-Chair Payette further stated that Grievant's hearing was based on being retaliated against for whistleblowing and was a different matter than a hearing regarding a dismissal, suspension or demotion.

Co-Vice Chair Payette requested a motion.

MOTION: Moved to deny the grievance based on NAC 284.589(6), Grievant had not proven that a regulation had been violated.
BY: Committee Member Sherri Thompson
SECOND: Committee Member Claudia Stieber
VOTE: The vote was unanimous in favor of the motion.

9. Public Comment

Ahrien Johnson stated that he understood that the EMC was not the body to make the change but that he still wanted to go on the record to say that the circumstances for a whistleblower could be very stressful and confidential. Mr. Johnson further stated that it was his belief that the State needed to review how it dealt with the whistleblower and allow the person to deal with, and prepare for, something that is very stressful for them.

10. Adjournment

MOTION: Moved to adjourn.
BY: Committee Member David Flickinger
SECOND: Committee Member Claudia Stieber
VOTE: The vote was unanimous in favor of the motion.