



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
November 20, 2014

Held at the Blasdel Building, 209 E. Musser St., Room 105, 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	X
Ms. Mandy Payette–Co-Vice-Chair	
Ms. Bonnie Long	
Ms. Claudia Stieber	
Ms. Allison Wall	
Ms. Michelle Weyland	X

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. **Chair Mark Evans:** 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

Chair Evans requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.
BY: Committee Member David Flickinger
SECOND: Committee Member Michelle Weyland
VOTE: The vote was unanimous in favor of the motion.

4. Discussion and possible action related to motion to dismiss of Grievance #3296 of Shari Kassebaum, submitted by the Department of Corrections, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC” or “Committee”) by the agency employer Department of Corrections (“NDOC”) which was represented by Senior Deputy Attorney General Janet Traut (“Ms. Traut”). Shari Kassebaum (“Ms. Kassebaum” or “Grievant”) was present in proper person.

NDOC argued that the EMC lacked jurisdiction to hear Grievance #3296 because the requested remedy was to stop retaliation against Ms. Kassebaum based on her status as a whistleblower and that it was well established that the Committee lacked the ability to hear whistleblower issues, as those claims fell within the jurisdiction of the Personnel Commission.

Grievant argued that her evaluation contained inaccurate facts that were unable to be proved; and that she had not filed a whistleblower complaint.

The Committee considered the evidence and arguments of counsel, and the parties; and deliberated on the record. Co-Vice-Chair Mandy Payette stated she thought the matter was a whistleblower situation and that per statute, the issue would need to be heard by a hearing officer. Committee Members David Flickinger and Sherri Thompson stated they were in agreement with Co-Vice-Chair Payette. Chair Evans stated that the Committee had looked at evaluations and determined if the statements were fair however, if those statements were unfair because Grievant was retaliated against, he agreed that the hearing officer was in the better position to hear the legal arguments and rule on the matter. Chair Evans additionally stated that it would better serve Grievant to stay in one jurisdiction.

Chair Evans requested a motion.

MOTION: Moved to grant the motion to dismiss on the basis that the committee lacked jurisdiction over a whistleblower claim.
BY: Committee Member David Flickinger
SECOND: Committee Member Sherri Thompson

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

5. Adjustment of Grievance of Shari Kassebaum, #3225, Department of Corrections – Action Item

The Committee and the parties agreed to combine agenda items 5 and 6 and hear grievance numbers 3225 and 3232 together.

6. Adjustment of Grievance of Shari Kassebaum, #3232, Department of Corrections – Action Item

The agency employer NDOC was represented by Deputy Attorney General Dominika Batten. Grievant was present in proper person.

The exhibits submitted to the EMC prior to the hearing were marked. NDOC objected to Grievant's attempt to offer a letter to Governor Sandoval as evidence on relevance grounds. The Committee allowed the letter to be admitted on the basis that it was relevant to the issue of whether the case involved reprisal or retaliatory action against a state employee. Grievant, Associate Warden Quentin Byrne, Associate Warden William Sandie, and Warden Robert LeGrand ("Warden LeGrand") from NDOC were duly sworn and appeared at the hearing.

Prior to the presentation of evidence, NDOC stated that it would not make a formal motion to dismiss the grievances because some of Grievant's claims were within the jurisdiction of the Committee, but NDOC asked the Committee to limit the hearing to those issues and possible remedies which it possessed the ability to grant, which excluded ordering training or an investigation and discipline of other employees; and that it limit itself to determining if the Written Reprimand ("Reprimand") was appropriate. The EMC agreed that several proposed remedies were beyond its jurisdiction and agreed that it would limit its review to the Reprimand.

Grievant asserted that the investigation pertaining to the charge of discourtesy was done improperly, in violation of the peace officer bill of rights; that NDOC had not been fair or consistent in their application of discipline; and that Warden LeGrand had acted inappropriately while administering the Reprimand.

NDOC argued that the Reprimand was warranted because the incident in question was investigated by the Inspector General's Office who interviewed nine people regarding the incident and that after the investigation was complete, a recommendation of discipline for discourtesy was sustained.

Grievant testified that she had encountered a Correctional Officer Trainee ("Trainee") in the gatehouse on March 4, 2014 and that they had a discussion regarding their interaction on the previous day's commute. Grievant testified that she did not yell and did not raise her voice, but that she had spoken forcefully.

NDOC read portions of statements taken by the Inspector General of the eight direct witnesses of the incident which gave rise to the Reprimand. The witness

statements described that Grievant had been loud and intimidating to a newer employee. Some statements described that Grievant was cursing.

Warden LeGrand testified that the discourteous behavior that supported the Reprimand was: Grievant would not let the Trainee talk; the demeanor of the situation was discourteous, not one specific word; some witnesses believed that the discussion rose to the level of a disturbance; and the conduct of the Grievant was discourteous, whether or not cursing was involved. When questioned about the decision to issue a Reprimand as punishment, Warden LeGrand stated that discourteous behavior was a Class 2 offense under AR 339.05 and the minimum recommended penalty was a Reprimand; however, NDOC did possess the discretion to waive from the recommended penalty.

There was substantial testimony regarding allegations of retaliation, investigation procedures, gender discrimination, the meeting with the Grievant to deliver the Reprimand and other allegations of misconduct; however, the Committee's jurisdiction extended only to the conduct that was the subject of the Reprimand and whether Grievant's conduct warranted a Reprimand for discourteous behavior under AR 339.05(6)(A).

The Committee reviewed the evidence, considered the documents filed, the statements of the witnesses, and the arguments of counsel and the parties, and deliberated regarding the proper disposition of these grievances on the record. All Committee Members agreed that the conduct of Grievant had warranted punishment however, they questioned whether the punishment of Reprimand was too harsh. Committee Member Flickinger stated that the conduct fell within AR 339.05 and that NDOC had followed their guidelines and policies. Committee Member Flickinger additionally noted that NDOC had testified that it had been within their authority to administer a punishment of a lower level than a Reprimand for a Class 2 offense however, due to the severity of the conduct, the number of witnesses, and the area, it was determined that the incident had met the needs for a Reprimand. Chair Evans questioned whether the Reprimand had been specific enough. Committee Member Thompson suggested that the Reprimand be withdrawn and that Grievant's punishment be changed to a written warning. Committee Member Flickinger stated that if the Committee decided not to follow through with the Reprimand, it needed to follow the ARs for the lesser punishment of verbal counseling and in turn, change the violation from a Class 2 to a Class 1; however, he stated the offense of discourtesy fell under Class 2 and therefore, the violation should remain a Class 2, with the minimum punishment of Reprimand. Committee Member Michelle Weyland stated it should be adjusted from Class 2 to Class 1 with verbal counseling and Committee Member Thompson stated she was in agreement with the change.

Chair Evans requested a motion.

MOTION: Moved that the Written Reprimand be withdrawn and that the Class 2 offense be changed to a Class 1 offense with verbal counseling as punishment on the basis that Warden LeGrand had

indicated that he had authority to administer a punishment of a lower level.

BY: Committee Member Michelle Weyland
SECOND: Committee Member Sherri Thompson
VOTE: The motion passed with a 3:1 majority vote. Chair Mark Evans and Committee Members Michelle Weyland and Sherri Thompson voted in favor and Committee Member David Flickinger voted against.

7. Public Comment

Janet Traut made comment that the *Taylor* decision by the Supreme Court had said that the level of discipline was to be decided by the appointing authority and that hearing officers could not change it. Ms. Traut further commented that when NAC 284.650 said a matter was cause for disciplinary action, it was beyond the discretion of the EMC to say it should be changed to a verbal counseling. Ms. Traut stated that there had been a valid motion to dismiss before the EMC that was in regard to splitting the issues and that the issues should've been split.

Chair Evans stated that Ms. Traut's comment was a good insight.

8. Adjournment

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