



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
December 11, 2014

Held at the Grant Sawyer Building, 555 E. Washington Ave., Room 1100, Las Vegas, Nevada, and the Blasdel Building, 209 E. Musser St., Room 105, Carson City, 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	
Ms. Allison Wall	
Ms. Michelle Weyland	X
Employee Representatives	
Ms. Stephanie Canter—Co-Vice-Chair	X
Ms. Donya Deleon	X
Mr. Tracy DuPree	
Mr. David Flickinger	
Ms. Turessa Russell	
Ms. Sherri Thompson	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator
Ms. Jocelyn Zepeda, Hearing Clerk

- 1. Co-Vice-Chair Stephanie Canter:** 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 Canter requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.
BY: Co-Vice-Chair Mandy Payette
SECOND: Committee Member Michelle Weyland
VOTE: The vote was unanimous in favor of the motion.

4. Approval of Minutes for October 9, 2014 – Action Item

Co-Vice-Chair Canter requested a motion to approve the minutes.

MOTION: Moved to approve the minutes.
BY: Committee Member Michelle Weyland
SECOND: Committee Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

5. Discussion and possible action related to motion to dismiss of Grievances #3155 & 3301 of William Reubart, 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 Nevada Department of Corrections (“NDOC”) which was represented by Deputy Attorney General Charles Mackey (“Mr. Mackey”). William Reubart (“Mr. Reubart” or “Grievant”) was present and was represented by Adam Levine (“Mr. Levine”).

NDOC argued in substance that the grievances involved cases of non-selection and that in the past, the Committee had denied grievances for non-selection if the grievant had failed to present any facts that the agency had violated any statute or regulation. Mr. Mackey additionally argued in substance that NAC 284.361 stated that the appointing authority should attempt to communicate with at least five eligible persons he or she deemed most qualified based on a review of their respective qualifications, and that this particular language gave the appointing authority discretion to determine the qualifications of individuals and which individuals to communicate with when selecting candidates for employment positions. Mr. Mackey additionally argued that Mr. Reubart’s contention that the plain language of NAC 284.361 explicitly required the appointing authority to attempt to communicate with the five most qualified people was not what that regulation stated. NDOC further noted in substance that the grievance itself did not contend that NDOC violated any regulation or statute; instead, the grievant contended that he was not selected for the Criminal Investigator I positions in retaliation for making a report of improper

governmental action in the past, which was in effect a whistleblower complaint. NDOC argued in substance that NRS 281.641 addressed the process and forum for such a complaint, and that a whistleblower complaint needed to be filed within two years of the report of improper governmental conduct; therefore, the EMC did not have jurisdiction to hear either grievance and both grievances had to be dismissed.

Mr. Levine argued that NAC 284.361(5) stated, in regard to unranked lists, that the appointing authority should attempt to communicate, as provided in NAC 284.373, with at least five eligible people deemed to be the most qualified based upon a review of their respective qualifications; and that the regulation did vest the appointing authority with discretion; however, that the discretion was not unfettered and could be abused. Mr. Levine in substance asserted that NDOC had abused its discretion in this case because Mr. Reubart was clearly the most qualified candidate who applied for the Criminal Investigator I positions in question. Mr. Levine added in substance that the appointing authority in both instances had deliberately passed over Mr. Reubart, who had already held the Criminal Investigator I position and had the Peace Officers Standards and Training (POST) certification, for people who had never held a Criminal Investigator I position and who lacked the basic law enforcement certifications necessary for the Criminal Investigator I position. Mr. Levine additionally argued in substance that the reason Mr. Reubart had made his grievance was irrelevant to the fact that he was among the five most qualified persons who had applied for the Criminal Investigator I positions and was passed over in contradiction to regulation.

The Committee considered the evidence, arguments of counsel, and deliberated on the record. Committee Member Donya Deleon stated in substance that statute may have been violated on the issue. Co-Vice-Chair Canter in substance noted that the EMC did have the authority to review whether or not statute had been violated and determine if the certain criteria had been met. Co-Vice-Chair Mandy Payette stated in substance that the Committee could not grant the resolution Mr. Reubart was seeking because it could not order NDOC to reopen the position announcements. Co-Vice-Chair Canter noted that in the past, the Committee had not dismissed a grievance because it had been unable to honor the resolution the grievant was seeking, and that the Committee had changed the resolution which the grievant had asked for. Committee Member Deleon stated in substance that she agreed with Co-Vice-Chair Canter.

Co-Vice-Chair Canter requested a motion.

MOTION: Moved to deny the motion to dismiss on the basis that the Committee had jurisdiction to decide whether NDOC failed to comply with NAC 284.361.

BY: Co-Vice-Chair Stephanie Canter

SECOND: Committee Member Michelle Weyland

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

6. Public Comment

There were no comments from the audience or Committee members.

7. Adjournment

MOTION: Moved to adjourn.

BY: Co-Vice-Chair Mandy Payette

SECOND: Committee Member Michelle Weyland

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