



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
December 15, 2016

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
Ms. Mandy Hagler–Chair	
Ms. Pauline Beigel	
Mr. Guy Puglisi	X
Ms. Claudia Stieber	
Ms. Allison Wall–Co-Vice-Chair	X
Ms. Michelle Weyland	
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	
Ms. Donya Deleon	
Mr. Tracy DuPree	X
Mr. David Flickinger	
Ms. Turessa Russell	
Ms. Sherri Thompson	X

Staff Present:

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

- 1. Co-Vice-Chair Allison Wall:** 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

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

MOTION: Moved to approve the adoption of the agenda.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

4. Adjustment of Grievance of Jonathan Allen-Ricksecker, #4276, Department of Corrections – Action Item

Co-Vice-Chair Wall opened the hearing on grievance #4276 filed by Johnathan Allen-Ricksecker (“Mr. Allen-Ricksecker” or “Grievant”). Grievant was present and represented by Richard McCann (“Mr. McCann”). The State of Nevada, Department of Corrections (“NDOC”), was represented by Deputy Attorney General Michelle D. Alanis (“Deputy Attorney General Alanis”). Both parties submitted exhibits to which there were no objections. However, one exhibit, Grievant’s Exhibit Two, was removed for privacy reasons, as stated by Co-Vice-Chair Allison Wall. Grievant, NDOC Personnel Officer II David Wright (“Mr. Wright”) and Personnel Analyst III Carrie Hughes (“Ms. Hughes”) were sworn in and testified at the hearing.

Mr. McCann argued in substance that the grievance was as much of a legal matter as a factual one. He stated in substance that Grievant had been with NDOC for sixteen and a half years. Due to his wife’s chronic illness, Mr. McCann noted in substance, Grievant exhausted his yearly sick leave, leaving no sick leave time for Grievant to use for himself or his five children if the need arose.

Mr. McCann stated in substance that NAC 284.5811(4) said that an employee who was taking leave pursuant to the Family and Medical Leave Act (“FMLA”) had to use all forms of accrued leave prior to taking leave without pay (“LWOP”). Mr. McCann pointed out in substance that NAC 284.5811(4) did not say what order the accrued forms of leave were required to be used by State employees. Additionally, Mr. McCann noted in substance that it was NDOC policy, for purposes of FMLA, to require its employees to use their sick leave in full before the employee was allowed to use annual leave, comp time or LWOP.

Mr. McCann further argued in substance that the FMLA was supposed to be a benefit to employees, but the way that NDOC read NAC 284.5811(4) and implemented FMLA turned it into a detriment for Grievant. Mr. McCann recognized that although the EMC had no authority to change the regulation, the EMC could recommend that the matter be brought into compliance with a set of practices that was “employee generous,” whereby an employee could choose to use sick leave, annual leave or comp time in order to fulfill getting a full paycheck during their FMLA leave time. Mr. McCann noted in substance that due to Grievant’s particular situation, when he went to use non FMLA sick leave on himself or for a family member he did not have any sick leave. Mr. McCann

added in substance that the EMC could recommend to NDOC that it consider changing its process and allow for an “open ended discussion” on the matter, and that just because NDOC is allowed to do something in a certain way does not mean it has to be done that way.

Deputy Attorney General Alanis argued in substance that Grievant filed a grievance regarding NDOC policy which required employees who are using FMLA to use all accrued leave prior to using any other kind of leave. The Grievant’s proposed resolution, Deputy Attorney General Alanis noted in substance, was for NDOC to comply with the FMLA and NAC 284.5811 and to discontinue the arbitrary, discriminatory and erroneous exclusion of leave option benefits.

Deputy Attorney General Alanis argued that NDOC was in compliance with FMLA and NAC 284.5811, and that its FMLA policy was neither arbitrary nor discriminatory, and did not unfairly exclude leave option benefits. Additionally, Deputy Attorney General Alanis stated in substance that there were two important issues to note with respect to the grievance: first, the underlying date of the incident stemmed from Grievant calling in sick on February 23, 2016. Although Grievant was approved for intermittent FMLA, he did not use FMLA that particular day, and therefore FMLA benefits would not apply to that day in question. Second, NDOC’s policy found in OP (“Operating Procedure”) 322, which required that sick leave be used first, then either annual leave or compensatory leave, was in compliance with the FMLA and the regulations, so there was no violation of law or policy.

Additionally, Deputy Attorney General Alanis argued in substance that the FMLA allowed employers to have employees use accrued paid leave while an employee was on FMLA, and that the FMLA required employees to follow the employers normal policy for using accrued leave.

Deputy Attorney General Alanis argued in substance that if Grievant felt that NDOC’s policy was a violation of the FMLA then it was NDOC’s position that the EMC did not have the jurisdiction to hear the matter. Furthermore, Deputy Attorney General Alanis stated that NDOC had properly responded to Mr. Allen-Ricksecker’s grievance.

Grievant testified in substance that he was employed by the State of Nevada, that his agency was the NDOC, and that he worked at the High Desert State Prison as a correctional officer. Grievant stated in substance that he had five children, and that his wife had a serious chronic condition, that she has had it for years, and that it would not go away, so it was an ongoing issue. Mr. Allen-Ricksecker noted that although his grievance cited a single issue, the issue could potentially go on through his entire employment with the State. Grievant felt that the EMC had jurisdiction over his grievance because it is an interpretation of law that came into question. As a result of NDOC’s interpretation of the FMLA, Grievant argued in substance, he had lost important benefits as a result of FMLA events.

Grievant noted in substance that as matters stood today, if he received a call that his wife or kids were sick for a non-FMLA event then he would go into LWOP status, that he would lose his accrued sick leave for that bi-weekly period and his accrued annual leave for that pay period, among other benefits. Grievant noted that his FMLA leave was intermittent, and that he was required to estimate how many FMLA episodes his wife might have on a monthly basis. Grievant stated in substance that he wanted as a remedy to be able to use his approved leave for FMLA events and FMLA events only, so that when he had an FMLA qualifying event he could choose to use either his sick leave or annual leave to cover the FMLA qualifying event. Grievant added in substance that he wanted the opportunity to leave a couple of hours of sick leave in the “bank” to use in case he or his kids had a non FMLA qualifying illness.

Grievant noted in substance that the .46 hours that was originally coded as LWOP on his time sheet was restored to him, but he stated that he had the perpetual issue where if anything happened he would be in the same boat as far as going into LWOP status. Grievant stated in substance that he accrued approximately nine hours of sick leave per month, but that if his wife had an episode he would use eight hours of sick leave, and that he currently had only 4.36 hours of sick leave which he had just earned.

Additionally, Grievant acknowledged in substance that the EMC was powerless to change the NAC’s and NRS’, but that he was looking for a reaffirmation that his interpretation of the relevant NAC’s was correct, and that NDOC did not have the authority itself to change the State policy in the NAC’s, particularly the chapter delegated to the Department of Administration (NAC Chapter 284).

Grievant also testified in substance that there was a disconnect between certain NAC’s in terms of some that require a certain “order” and other ones that do not require a certain “order.” Grievant referred to his Exhibit Nine, which he indicated were the guidelines sent by the Department of Administration to State agencies. Grievant stated in substance that nothing in the guidelines contradicted what he wanted to do, which he again reiterated were for FMLA events only, and that he be allowed to use leave from any of his earned/accrued leave accounts to cover the FMLA absence. Grievant also stated in substance that nowhere in NDOC Policy did one see where it was required by NDOC that sick leave be used first, and that the only place where one saw the requirement to use sick leave first was in OP 322.04, and not in the NAC or NDOC’s Administrative Regulations. Grievant added that it was this requirement which caused him to lose benefits protected under the FMLA. In response to questioning, Grievant indicated in substance that his Exhibit Nine, *the Family and Medical Leave Act (FMLA) Overview For State of Nevada Executive Branch Agencies (“FMLA Overview”)*, did not say one way or the other as to whether NDOC could arrange for the order of use of paid leave under the FMLA.

Mr. Wright testified that he was a Personnel Officer II for NDOC, and had been so since September 2016. He stated in substance that his job duties included employee relations and handling the grievance process for NDOC. Mr. Wright said in substance that he was familiar with Mr. Allen-Ricksecker’s grievance.

Mr. Wright also testified that he was familiar with the FMLA. Mr. Wright stated in substance that the FMLA required the employer to provide up to twelve weeks of unpaid leave or twenty-six weeks for military purposes, and that several benefits were included while taking leave. Mr. Wright indicated in substance that the FMLA allowed for intermittent leave too, whether paid or unpaid. Mr. Wright stated in substance that payment would be according to employer policies.

Additionally, Mr. Wright testified in substance that the FMLA did not require that accrued leave be used, and that the FMLA did not prevent an employer from having a policy saying how accrued leave could be used for FMLA purposes. Furthermore, Mr. Wright testified in substance that an FMLA covered event was something that an employee would need leave for that coincided with what the FMLA paperwork from a physician said.

Mr. Wright stated that the February 23, 2016 incident referenced in the grievance was not an FMLA covered event. According to Mr. Wright, the code for approved leave under the FMLA for a family sick event would be UFM FS code, and the code used by Grievant on February 23, 2016 was for regular sick leave.

Mr. Wright testified in substance that NAC 284.5811 did not require that any particular leave be used first for FMLA purposes, and that the regulation did not prohibit an employer from requiring that any particular leave be used first for FMLA purposes. Mr. Wright further indicated that NDOC had a policy on FMLA, AR 322, and that AR 322 did not conflict with OP 322. Additionally, Mr. Wright stated in substance that OP 322 complied with the FMLA and NAC 284.5811.

Mr. Wright testified in substance that in his opinion, Grievant's sick leave was not prematurely depleted. According to Mr. Wright, the purpose of NDOC requiring the exhausting of sick leave prior to other accrued leave being used for FMLA was to ensure that its employees were complying with agency leave policies, and to give employees a guideline, or a procedure, and to show employees what order and what the expectation is when an employee uses FMLA leave.

Mr. Wright also stated in substance that this policy (related to FMLA) was not State-wide, and was specific to NDOC, and was unable to answer whether other State agencies had the same policy. Mr. Wright also indicated in substance that Grievant's employer was the State of Nevada, and that direction (apparently *FMLA Overview*) through the FMLA was to the State of Nevada. Mr. Wright also indicated in substance that there was no particular order of leave use at the State level, but that the FMLA did say that an employee must follow their agency's leave policies.

Ms. Hughes testified that she was employed by the State of Nevada, Department of Administration Division of Human Resources as a Personnel Analyst III, in the group Consultation and Accountability, and had been in her current position since 2009. Ms. Hughes stated in substance that her duties revolved around

consultation, training, dealing with leave and attendance issues and the State's employee assistance program.

Ms. Hughes testified that she was familiar with the FMLA. Ms. Hughes indicated in substance that the FMLA did not require the need for employees to be paid, but that the FMLA allowed an employer to require paid leave to be used under the FMLA. Additionally, Ms. Hughes testified in substance that the FMLA did not prohibit an employer from requiring that certain, specified types of leave be used in a certain order, and that the FMLA allowed employers to apply their own leave policies. Ms. Hughes also stated in substance that NAC 284.5811(4) did not address what types of compensatory leave be used first over any other leave, nor did that NAC prohibit an employer from requiring that certain types of compensatory leave be used before other types of compensatory leave.

Additionally, Ms. Hughes testified in substance that it was her understanding, that the FMLA allows an employer to implement their leave and attendance policies, that NDOC'S policy concerning the FMLA did not violate the FMLA. Ms. Hughes also testified in substance that it was her opinion that Grievant's sick leave in this particular situation was not prematurely depleted.

The EMC discussed and deliberated on Mr. Allen-Ricksecker's grievance. Member DuPree stated in substance that all Grievant was asking was for the EMC to direct NDOC to look at its policy, and asked who would lose from such an action. Member DuPree added in substance that he felt that NDOC had not intended to deprive the Grievant of any benefits, or that NDOC violated any policy or any part of the FMLA. Member Thompson stated in substance that she agreed with Member DuPree concerning his statement. Member Puglisi stated in substance that it was unfortunate that the agency was not doing the right thing when it had the ability to do so, and that there was a mechanism for an agency to allow an employee to use annual leave for FMLA leave, and that such an action was not forbidden by law.

Co-Vice-Chair Wall stated in substance that one of the roles of the EMC was to look at the grievance and the proposed resolutions, and that is what the EMC would have to vote on. Co-Vice-Chair Wall added in substance that the agencies had the right to create policies, although she agreed with Member Puglisi's comments, and she posed the question of whether NDOC violated its FMLA policy. Co-Vice-Chair Wall stated in substance that she believed that NDOC had complied with the FMLA, but that asking NDOC to look at the policy wouldn't harm anything.

MOTION: Moved to deny grievance because NDOC did not violate the FMLA or NAC 284.5811. The motion also directed NDOC to look into providing its employees with a mechanism for using other types of leave in lieu of sick leave or FMLA when extraordinary circumstances exist.

BY: Committee Member Tracy DuPree

SECOND: Committee Member Guy Puglisi

VOTE: The motion passed unanimously.

5. Discussion and possible action related to Motion to Dismiss Grievance #4493 of Christopher Greb, Department of Public Safety – Action Item

Co-Vice-Chair Wall opened the discussion on Grievance #4493 filed by Christopher Greb (“Trooper Greb” or “Grievant”). Grievant was represented by Casey Gillham, Esq (“Attorney Gillham”). The State of Nevada, Department of Public Safety (“DPS”), was represented by Deputy Attorney General Brandon Price (“Deputy Attorney General Price”).

Deputy Attorney General Price informed the Committee that Trooper Greb was employed by DPS, and that in July 2006 Trooper Greb had been promoted to the rank of sergeant, and that he had worked as a sergeant at DPS for about ten years. Deputy Attorney General Price also stated in substance that as a sergeant Trooper Greb had been receiving a salary at grade 41, step level 10. However, Deputy Attorney General Price noted in substance that on May 31, 2016, Trooper Greb took a voluntary demotion from sergeant to DPS Officer II, and that he was now receiving salary at grade 39, step level 10.

Deputy Attorney General Price stated in substance that no one at DPS had asked Trooper Greb to take the demotion, that Trooper Greb took the demotion for his own personal reasons, as he had stated in his grievance. Around the time Trooper Greb took his demotion, Deputy Attorney General Price said in substance, Trooper Greb approached Major Andy McAfee (“Major McAfee”) and requested that his pay be frozen at the grade 41 level for two years.

Deputy Attorney General Price stated in substance that Major McAfee denied Trooper Greb’s request on the grounds that it was not in the State’s best interest to agree to the pay freeze. Deputy Attorney General Price also stated that instead of accepting DPS’ decision to deny his request for the higher pay grade, Trooper Greb had asked the Committee to order that DPS grant him his request, and that he receive six thousand five hundred fourteen dollars (\$6,514) over a two year span for taking on less responsibility, and that notably Trooper Greb no longer had supervisory responsibilities over staff.

Deputy Attorney General Price argued in substance that there were two grounds to dismiss Trooper Greb’s grievance. First, Deputy Attorney General Price stated in substance that the Committee lacked jurisdiction over the matter, and second, that the requested relief could not be granted by the Committee. Deputy Attorney General Price argued that an employee was entitled to a grievance hearing if the matter constituted something that was an injustice to the employee. The Committee, Deputy Attorney General Price indicated in substance, was in the business of adjusting grievances, and that if there was nothing to adjust there was no reason to have a hearing, and that some things were not grievable, including the present matter.

Deputy Attorney General Price stated in substance that Trooper Greb argued that his grievance was not one of the cases where the Committee lacked jurisdiction, because it was not specifically identified in NAC 284.658(2). However, Deputy Attorney General Price argued in substance that the regulation’s drafters could

not conceive of every situation where the Committee lacked jurisdiction, and that the Committee needed to keep that in mind, and also that NAC 284.658(2) needed to be read in conjunction with the other applicable regulations and statutes in Chapter 284.

Deputy Attorney General Price argued in substance that the decision to freeze an employee's pay after demotion was discretionary for the appointing authority, and that NAC 284.173 said this. Deputy Attorney General Price noted in substance that there was an exception in NAC 284.173(2), but that this exception was inapplicable in the present case because Trooper Greb's demotion was not in the best interest of the State, and that the decision rested with the Nevada Highway Patrol ("NHP"). As a result, Deputy Attorney General Price argued in substance, Trooper Greb could not establish that he suffered any kind of injustice subject to adjustment by the Committee.

Deputy Attorney General Price noted in substance that Trooper Greb argued, under the definition of a grievance, that a grievance involved anything that an employee felt constituted an injustice. Deputy Attorney General Price stated that an employee could claim they felt something constituted an injustice for virtually anything, and that decisions which were completely discretionary for an agency did not fall within the purview of the Committee, and that result was consistent with NRS 284.020.

Deputy Attorney General Price indicated that the second reason for a dismissal was that the Committee did not have the authority to grant the requested relief, which was that the Committee mandate NHP freeze Trooper Greb's pay at the grade 41 level for two years. Deputy Attorney General Price noted in substance that historically the Committee had not held hearings where it did not have the authority to grant the requested relief, and that holding a hearing where relief could not be granted would simply be a waste of resources. Deputy Attorney General Price also added in substance that Trooper Greb was receiving benefits from this demotion.

Attorney Gillham stated in substance that the reason everyone was present was because Trooper Greb was aware of at least three other troopers who, over the last couple of years, took voluntary demotions, requested their pay be frozen, and had those granted. Attorney Gillham stated in substance that if an agency was exercising its discretion in a discriminatory or arbitrary manner then there was an injustice. That was the reason, Attorney Gillham added in substance, that they needed a hearing, in order to show evidence and show the injustice.

Attorney Gillham stated that the NAC (284.695) was very clear as to when the Committee could dismiss a grievance without a hearing. Attorney Gillham stated in substance that NAC 284.695(1) said the EMC could only dismiss a grievance in two circumstances: first, if the dismissal was based upon the Committee's previous decisions, or two, if the grievance did not fall within the Committee's jurisdiction, and that neither circumstance applied in the present case.

Attorney Gillham argued in substance that pursuant to NAC 284.658, there were only seven instances where the Committee lacked jurisdiction, and that DPS had not argued that Trooper Greb's grievance fell into any of those categories. Attorney Gillham also argued in substance that the Committee could dismiss Trooper Greb's grievance if it had dismissed a grievance like Trooper Greb's previously. Attorney Gillham stated that DPS had not provided any decisions that were actually similar to Trooper Greb's. Instead, Attorney Gillham argued in substance that DPS had presented two decisions where the Committee said it did not have the authority to grant the employees' resolution, and so the Committee decided to "kick the ball." Attorney Gillham stated in substance that those previous decisions may not have been the best decisions, but in any event they were not factually similar to Trooper Greb's grievance. Attorney Gillham argued in substance that since there were no previous decisions on point and since the Committee had jurisdiction to hear the grievance, then there was no way it could dismiss Trooper Greb's grievance.

Attorney Gillham added in substance that the Committee could in fact grant Trooper Greb's requested relief, since the Committee had authority to adjust grievances concerning compensation, and that it would be premature to say that Trooper Greb had not suffered an injustice when the Committee had not heard any of the evidence on the matter.

In rebuttal argument, Deputy Attorney General Price added in substance that the other cases in the past where other troopers had their pay frozen had no relevance to Trooper Greb's grievance, and that each case was handled on a case by case basis, and the decision whether to freeze someone's pay had to do with the circumstances of that case. Deputy Attorney General Price also stated in substance that there were several instances where DPS declined to freeze the pay of employees who voluntarily demoted. Deputy Attorney General Price also noted in substance that the Committee had in the past made the decision consistently that when it could not grant the requested form of relief in a grievance it would not hear the grievance.

MOTION: Moved to deny DPS' Motion to Dismiss because the agency had not demonstrated proof of similar cases being decided by the Committee, and therefore the Committee has jurisdiction over the grievance pursuant to NAC 284.695.

BY: Committee Member Guy Puglisi

SECOND: Committee Member Tracy DuPree

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

6. Discussion and possible action related to Motion to Dismiss Grievance #4444 of Brian Bowles, Department of Motor Vehicles – Action Item

Co-Vice-Chair Wall opened the discussion on Grievance #4444 filed by Brian Bowles ("Mr. Bowles" or "Grievant"). Grievant represented himself, and the State of Nevada, Department of Motor Vehicles ("DMV"), was represented by Deputy Attorney General Brandon Price ("Deputy Attorney General Price").

Deputy Attorney General Price informed the Committee that Mr. Bowles was currently employed by the DMV as a Compliance Enforcement Investigator, and that he was a certified peace officer who made possible arrests as part of his employment duties. On February 12, 2016, Mr. Bowles had surgery on his hip for treatment of a non-work related injury. Deputy Attorney General Price indicated in substance that on March 9, 2016, Mr. Bowles received a release from his doctor to return to work on March 14, 2016 with certain restrictions. Mr. Bowles requested that he return to work on a light duty basis, which was denied by the DMV, because that agency does not have a modified or light duty schedule for employees who have suffered a non-work related injury.

Deputy Attorney General Price stated in substance that Mr. Bowles, in his grievance, admitted that the DMV did not have a light duty policy, but that he claimed he was subject to discrimination and a hostile work environment because he was not permitted to return to work on a light duty basis. Deputy Attorney General Price also stated that Mr. Bowles was requesting two forms of relief: that the DMV be required to create a light duty policy for non-work related injuries, and second, that the DMV be required to reimburse him eighty hours of sick leave which he used while recovering from surgery.

Deputy Attorney General Price stated in substance that the DMV was requesting that Mr. Bowles' grievance be dismissed on two grounds: first, that the Committee lacked jurisdiction over the matter, and second, that the Committee did not have the authority to grant the relief requested by Grievant.

Deputy Attorney General Price argued in substance that under NAC 284.695(1), the Committee could dismiss a grievance if the grievance was based upon a previous Committee decision or if the grievance did not fall within the Committee's jurisdiction. Deputy Attorney General Price indicated in substance Mr. Bowles' grievance was filled with allegations of discrimination and hostile work environment, and that there were specific avenues in both the Federal and the State system to hear those types of complaints outside of the grievance process. Deputy Attorney General Price added in substance that in this case Mr. Bowles' complaint was sent to the Harassment and Discrimination Unit of the Division of Human Resources Management ("DHRM"), and that his allegations were investigated and findings made. Deputy Attorney General Price stated in substance that the Committee has consistently held that it would not hear grievances that involved allegations of harassment or discrimination, and that Deputy Attorney General Price had provided prior decisions where the Committee had decided that was the case. Deputy Attorney General Price also stated in substance that the Frequently Asked Questions Form on the DHRM website specifically said that the grievance process was not the appropriate venue to address possible discrimination based on the Americans with Disabilities Act ("ADA").

Deputy Attorney General Price said in substance that Mr. Bowles had argued that the Committee was the proper forum because NAC 284.696 stated that an employee alleging unlawful discrimination could use the procedure for the adjustment of grievances. Deputy Attorney General Price noted in substance that NAC 284.696 provided multiple avenues an employee could use to have his

complaint heard, but that the key word in that regulation was “or.” Deputy Attorney General Price argued that NAC 284.696 did not allow an employee to have his grievance heard in multiple venues at the same time. Deputy Attorney General Price also argued in substance that it was apparent the Committee had decided that it would not hear discrimination and harassment types of cases because it simply did not have the expertise in the law to review those matters. Deputy Attorney General Price stated in substance that Mr. Bowles’ complaint should be dismissed because it had already been submitted to DHRM, and at this point Mr. Bowles was simply forum shopping, and for the Committee to hear the grievance would not be proper because it would risk an inconsistent result. Deputy Attorney General Price also stated in substance that the issues in Mr. Bowles’ grievance were moot, since his complaint had already been reviewed by DHRM and a decision made by that agency.

Deputy Attorney General Price indicated in substance that the second reason for dismissal was that Mr. Bowles had not suffered any sort of injustice when he was denied the opportunity to return to work on light duty. Deputy Attorney General Price stated in substance that the DMV did not have a light duty policy, and that there was no requirement that they have one. Deputy Attorney General Price also stated that the third reason the grievance should be dismissed was because the Committee did not have the authority to grant the requested relief, which was that the DMV implement a light duty policy, and that the Committee direct the DMV to reimburse Mr. Bowles the eighty hours of sick leave he used when recovering from surgery. However, Deputy Attorney General Price noted in substance that Mr. Bowles never showed how the sick leave regulations were violated by the DMV, and that cases like Mr. Bowles’ situation were the reason that the State had sick leave, and that the DMV had not requested that Mr. Bowles improperly use his sick leave.

Deputy Attorney General Price stated in substance that Mr. Bowles argued in his opposition that NAC 284.589 set forth the rules for granting administrative leave to employees, but when one read the regulation itself Mr. Bowles’ situation did not fit the situations addressed by that regulation.

Mr. Bowles stated in substance that it was his belief that the Committee had jurisdiction over grievances of a discriminatory nature. Mr. Bowles added in substance that the Committee’s decisions in the past to always deny hearing those (discrimination) cases may have been poor decisions, and that such past action was not a reason to ignore what was said in regulation. Mr. Bowles also noted in substance that his grievance contained other parts, such as the adjustment of his leave, which fell within the Committee’s jurisdiction.

Mr. Bowles argued in substance that his filing of a complaint with DHRM based on a set of circumstances did not deprive the Committee of the ability to hear his grievance or indicate that he was forum shopping. Mr. Bowles indicated in substance that he was solicited by Darcy Worms (“Ms. Worms”), the Administrator Section Manager of the Equal Employment Opportunity Office of the DHRM, to go ahead and file his complaint with the DHRM, and that Ms. Worms said in an e-mail that filing his complaint with DHRM would not impact his grievance.

Mr. Bowles also stated in substance that he believed NAC 284.696 granted a simple list of where one could make complaints, and did not say an employee could only file in one of those forums. Mr. Bowles added that the State should not be allowed to solicit a complaint that had already been submitted as a grievance with another agency and use that against the employee to deny hearing the grievance in the original forum in which the grievance was filed. Mr. Bowles added in substance that the specific findings by DHRM were not made known to him, and that the Committee was the only public body which could subpoena the decision out of the confidentiality requirements so that it could be known if there was a finding of discrimination in his case.

Mr. Bowles also stated in substance that he believed that being coercively told to use eighty hours of sick leave at the DMV's discretion and not his own certainly was an injustice. Mr. Bowles added in substance that he felt there was a violation of the ADA and NRS 284.153, because the DMV has discriminated against him and others in his office on the basis of a temporary disability, and that this too, was an injustice. Mr. Bowles argued in substance that the Committee could grant his requested relief, pursuant to NRS 284.073, by making an advisory recommendation to the Governor, and that the Governor's Office had the power to, if the DMV was violating the ADA in this case, tell the DMV to come up with an ADA compliant policy, and that this would satisfy his grievance. Finally, Mr. Bowles argued that NAC 284.589(1)(b) granted the DMV authority to grant administrative leave in his case, and so the Committee had the authority to direct the DMV to use that power and adjust his leave time.

In rebuttal, Deputy Attorney General Price stated in substance that the Committee was required to address the grievance as initially filed, and that one of the reasons by which the Committee could dismiss a grievance was its prior precedent, and that there were multiple decisions where the Committee said it did not hear harassment issues. Deputy Attorney General Price also argued in substance that Mr. Bowles' argument that he could have been granted administrative leave pursuant to NAC 284.589 was incorrect. Additionally, Deputy Attorney General Price stated in substance that the DMV respectfully disagreed with what Ms. Worms said to Mr. Bowles in her e-mail to him, and that since Mr. Bowles filed a complaint with the DHRM harassment unit he could not file a grievance with the Committee.

MOTION: Moved to grant DMV's Motion to Dismiss because the Committee does not have jurisdiction over discriminatory matters referred to another venue, and because the Committee does not have jurisdiction to have the DMV develop and implement a light duty policy.

BY: Committee Member Sherri Thompson

SECOND: Committee Tracy DuPree

VOTE: The motion passed with a 3:1 vote with Guy Puglisi voting in the negative.

7. Public Comment

There were no comments from the audience or Committee Members.

8. Adjournment