



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
February 8, 2018

Held at the Nevada Department of Transportation, HQ Carson City, 1263 S. Stewart St., Room 302, Carson City, Nevada, the Nevada Department of Transportation, District 1, 123 E. Washington Ave., Building B Training Room, Las Vegas, Nevada, and the Nevada Department of Transportation Building, 1401 E. Aultman St., Ely Conference Room, Ely, 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	X
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Kara Morris, EMC Hearing Clerk
Ms. Zina Cage, EMC Hearing Clerk

1. Call to Order

Chair Hagler called the meeting to order at approximately 11:00 am.

2. Public Comment

There were no comments from the audience or Committee Members.

Chair Hagler opened the meeting with committee introductions.

3. Adoption of the Agenda – Action Item

Chair Hagler requested a motion to adopt the agenda.

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

4. Reconsideration of Minutes for September 28, 2017 in order to correct clerical error – Action Item

Chair Hagler requested a motion to adopt the corrected minutes.

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

5. Approval of Minutes for November 30, 2017– Action Item

Chair Hagler requested a motion to adopt the minutes.

MOTION: Moved to approve the minutes.
BY: Member Sherri Thompson
SECOND: Member Turessa Russell
VOTE: The vote was unanimous in favor of the motion.

6. Approval of Minutes for December 14, 2017– Action Item

Chair Hagler requested a motion to adopt the minutes.

MOTION: Moved to approve the minutes.
BY: Member Turessa Russell
SECOND: Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

7. Discussion and possible action related to Motion to Dismiss Grievance #5452 of Deborah Lindsley, Department of Corrections – Action Item

The Committee is authorized to consider motions to dismiss and corresponding documents pursuant to NAC 284.695(1), which allow the Committee to answer a request for the Committee to consider a grievance without a hearing if the matter is based on a previous Committee decision or if the matter does not fall within the Committee’s jurisdiction.

The above-referenced motion to dismiss was heard by the Committee¹ on February 8, 2018. Chief Deputy Attorney General Cameron Vandenberg (“Chief Deputy Attorney General Vandenberg”) represented NDOC, while Ms. Lindsley were present in proper person.

Chief Deputy Attorney General Vandenberg in substance argued that NDOC performed a bidding process annually every year that allowed NDOC’s correctional officers to bid on posts, shifts, days off and annual leave.

Chief Deputy Attorney General Vandenberg stated in substance that the Nevada State Prisons were suffering from a critical staff shortage, and that this shortage impeded the staffing and operations of Nevada prisons.

Chief Deputy Attorney General Vandenberg noted in substance that NDOC developed a critical labor shortage program where NDOC brought in retirees to fill positions on a temporary basis, and that this program allowed NDOC to achieve the minimum staffing level required by law and to reduce overtime levels.

Chief Deputy Attorney General Vandenberg stated in substance that one of the stipulations of the retirees coming to Ely State Prison was that the Prison would have to give the retirees the shifts which the retirees wanted, resulting in those positions being withdrawn from the bidding process.

Chief Deputy Attorney Vandenberg added in substance that the warden at each State prison could designate certain posts as critical or exempt and establish criteria to fill those posts.

Chief Deputy Attorney General Vandenberg argued in substance that Ms. Lindsley felt that this process was unfair because it removed certain positions/posts from the bidding process that Ms. Lindsley and other officers could have bid on, and that Ms. Lindsley felt that this process was a violation of NDOC’s administrative regulations.

Chief Deputy Attorney General Vandenberg noted in substance that Ms. Lindsley had not alleged that she was unable to bid on a shift of Ms. Lindsley’s choice.

Chief Deputy Attorney General Vandenberg stated in substance that originally she brought the motion to dismiss based on the fact that Ms. Lindsley had no standing because Ms. Lindsley had alleged no injustice or harm had occurred to her, and that Ms. Lindsley thought the process being used by NDOC was unfair to everyone.

Chief Deputy Attorney General Vandenberg argued in substance that historically the Committee refused to hear grievances where the harm or injustice did not pertain to the Grievant.

¹ The Committee members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt), who chaired the meeting; Jennifer Bauer (SPCSA), Sherri Thomson (DETR) and Turessa Russell (UNLV). EMC Hearing Clerks, Kara Morris and Zina Cage, and Counsel for the EMC, Deputy Attorney General Robert A. Whitney, were also present.

Chief Deputy Attorney General Vandenberg also argued in substance that the Committee did not have authority to do much about the grievance because NDOC was not going to redo its bids (part of the remedy Ms. Lindsley had sought), and that the matter fell under NRS 284.020, which stated that the directors of state departments had the authority to manage affairs of their departments as the directors saw fit.

Chief Deputy Attorney General Vandenberg further stated in substance that the needs and safety of the institution would need to come before the privileges enjoyed by correctional officers, and that this was one of those situations.

Chief Deputy Attorney General Vandenberg requested that the Committee grant the motion to dismiss, based on lack of standing and the inability to grant Ms. Lindsley's proposed resolution (to restart the shift bid process).

Chief Deputy Attorney General Vandenberg also requested that the Committee recommend that Ms. Lindsley pursue her concerns at the next Board of Prison Commissioners meeting, or even perhaps address the matter to the Governor.

Ms. Lindsley stated in substance that the motivation for her starting of the grievance process was for the benefit of *other* employees because she was "ok" with the post she received; however, Ms. Lindsley also stated that this did not mean her individual employee rights were not violated.

Ms. Lindsley added in substance that five positions that were not exempt or vacant were given to retirees before the shift bid began, thus reducing for five officers of higher seniority positions that could have been bid on, and that 153 officers were in turn deprived of the availability of the posts available for bid, so that in substance five retirees affected 153 correctional officers.

Ms. Lindsley added in substance that if this had not happened, perhaps another position would have been available that Ms. Lindsley would have liked better than the position that she bid on, and that she would have had five more post choices, and could have chosen one of the positions that a retiree had received.

Ms. Lindsley added in substance that in regards to Operational Procedure ("OP") 301, Shift Bid Procedure, she escalated her grievance to the Committee because Ms. Lindsley wanted to know where she and the other correctional officers would stand next year at shift bid.

Ms. Lindsley stated in substance that the wardens at Ely State Prison had "substantially increased" the number of exempt posts previously allowed. Ms. Lindsley in substance rhetorically asked if the wardens could increase the number of exempt posts so that the shift bids were done away with.

Ms. Lindsley added in substance that she was told that 75 posts, including tower and guns posts, would be exempt from shift bid, but that the officers could apply with the warden for those posts before shift bid.

However, Ms. Lindsley stated that the number of exempt posts increased before shift bid to 83.

Ms. Lindsley in substance asked why the experienced retirees were not placed in the remaining 33 exempt positions that were yet to be staffed, instead of posts that were to be offered at shift bid, further reducing the posts available for bid.

Ms. Lindsley asked in substance where the critical labor shortage was, considering the amount of available officers and trainees to fill the posts at Ely State Prison.

Ms. Lindsley also stated in substance that it appeared to her that the Program was being used to break the State's pre-lawsuit agreement that was the foundation of the shift post bid process that was set forth in OP 301.

Ms. Lindsley added in substance that the purpose of the shift post bid process was to prevent abuse of correctional officers by providing an impartial venue for assigning posts and shifts, and that this need was no different today than in the past.

Ms. Lindsley added in substance that with respect to the critical labor shortage program, the memoranda which she read said that retirees would only be offered vacant posts still open after the regular shift bid process had taken place, and that NDOC's response was that institutional needs trumped shift bid policy.

Ms. Lindsley stated in substance that another "tactic" used by NDOC was that the posts retirees were put into what were considered critical posts, but that all posts at the Prison were critical, and that the posts in which the retirees were placed were no different than any other post at Ely State Prison, and required no special training.

Ms. Lindsley in substance asked that her grievance not be dismissed.

Ms. Lindsley also stated in substance that she did not expect that the shift bids would be redone, but that she was concerned about what would happen next year, and that as far as a resolution what was needed was firm policy on this issue that all correctional officers could understand.

In response to Committee questioning, Ms. Lindsley stated in substance that the critical labor shortage program substantially reduced her ability to get a post that she wanted, but that she was ok with the post she received, but that if she would have had five more placements available things would have been different.

Ms. Lindsley added in substance that 153 officers had been pushed 5 positions down the line as a result of the implementation of the critical labor shortage program at Ely State Prison.

The Committee, after having read and considered all of the documents filed in this matter, and after having heard oral arguments, deliberated on the issues presented.

Member Thompson stated in substance that from what she heard today Ms. Lindsley was affected, and that Ms. Lindsley had information that the Committee needed to hear, and that she was interested in going forward with the grievance and denying the motion to dismiss.

Member Russell stated in substance that she agreed with Member Thompson, but that the Committee needed to limit the hearing as to whether or not there was an actual violation of an administrative regulation.

Member Bauer asked in substance if the Committee had heard this kind of grievance before, and if there was precedence for this kind of grievance, and whether a resolution conference had been held in this matter.

Chair Hagler stated in substance that the memorandum that was attached to Ms. Lindsley's grievance showed that the warden would be assigning the positions, and that the critical hires would not be part of the bids for the posts.

Chair Hagler added in substance that it appeared to her from the memorandum sent out in this situation that the critical hires were going to be exempt from the shift bidding process.

Chair Hagler also stated in substance that she disagreed somewhat with Member Thompson with respect to whether Ms. Lindsley was affected, and that Ms. Lindsley was given the shift she wanted.

Chair Hagler added in substance that usually when the Committee granted a grievance hearing, it was when the employee had not received the shift or position that he or she wanted and the employee felt that AR 301 had been violated, so that she was having a hard time finding where there was a grievance in Ms. Lindsley's situation.

Member Bauer stated in substance that she was struggling with Ms. Lindsley's grievance because, based on past precedent, the Committee reviewed agency policy to see if it was applied consistently, but that she was undecided in this situation.

Chair Hagler added in substance that she thought that the memorandum sent out to the correctional officers clearly outlined that certain designated posts would not be part of the bidding process, which meant that those posts were to be assigned, and that Ms. Lindsley was not saying that the AR had not been followed, and that Ms. Lindsley simply did not agree with the fact that certain posts were given to retirees.

Chair Hagler also noted in substance that Ms. Lindsley was not alleging that she was not allowed to bid, because Ms. Lindsley received the post she wanted, and Ms. Lindsley was basically saying that the process could have affected some people.

Member Thompson stated in substance that the way she was reading the memorandum was that the warden was going to do the critical labor shortage post assignments after the non-critical staff bidding had taken place.

Chair Hagler stated in substance that she thought the matter came down to whether the Committee had jurisdiction to hear Ms. Lindsley's grievance because Ms. Lindsley was not grieved by this process.

Chair Hagler added in substance that it should be clarified whether the retirees returning as a result of the critical labor shortage program would be put into their position posts either pre post bid or after post bid.

Member Bauer made a motion to grant NDOC's motion to dismiss which failed to carry.

Member Thompson stated in substance that she agreed that Ms. Lindsley's grievance was likely not written the way she intended it to be written, and that the Committee would probably have to grant the motion to dismiss based on the fact that the Committee could not make a decision based on what Ms. Lindsley were requesting.

Member Russell added in substance that if she understood Member Thompson correctly, the grounds for granting the motion to dismiss did not match the motion that was made and failed, and that she agreed with Member Thompson.

A second motion to grant the motion to dismiss was made, based on the fact that Ms. Lindsley had not shown that she were personally affected by NDOC's actions in the matter per NAC 284.658.

The Committee voted² to grant NDOC's motion to dismiss.

MOTION: Moved to grant Motion to Dismiss based on NAC 284.658, (grievance defined), grievant did not prove an injustice occurred.
BY: Member Sherri Thompson
SECOND: Member Jennifer Bauer
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Motion to Dismiss Grievance #5458 of Debra Boone-Sharp, Department of Corrections – Action Item

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

The Committee is authorized to consider motions to dismiss and corresponding documents pursuant to NAC 284.695(1), which allow the Committee to answer a request for the Committee to consider a grievance without a hearing if the matter is based on a previous Committee decision or if the matter does not fall within the Committee's jurisdiction.

The above-referenced motion to dismiss was heard by the Committee³ on February 8, 2018. Chief Deputy Attorney General Cameron Vandenberg ("Chief Deputy Attorney General Vandenberg") represented NDOC. Ms. Boone-Sharp was present and represented by American Federation of State, County and Municipal Employees Representative James Gaida ("Mr. Gaida").

Chief Deputy Attorney General Vandenberg in substance stated that Ms. Boone-Sharp's grievance was virtually identical to Grievance # 5452, in that the grievances concerned a shift bid that occurred in November 2017, and that Ms. Boone-Sharp felt that the shift bid was unfair.

Chief Deputy Attorney General Vandenberg said in substance that Ms. Boone-Sharp felt that the process was unfair because retirees brought back into Ely State Prison as part of the critical labor shortage program were given their choice of positions as they were allowed to choose positions designated by the warden as critical before the shift bidding was opened to the regular correctional officers at Ely State Prison.

Chief Deputy Attorney Vandenberg noted in substance that Ms. Boone-Sharp had not alleged in her grievance that she was denied the shift she wanted, and that Ms. Boone-Sharp only indicated that all correctional officers at the Ely State Prison were pushed five spots back.

Therefore, Chief Deputy Attorney General Vandenberg moved to dismiss Ms. Boone-Sharp's grievance based on lack of standing (because Ms. Boone-Sharp alleged no injustice to her caused by her employer), and she noted that, based on past Committee decisions, there was a requirement that the employee/grievant suffer an injustice or suffer harm in some way by an employer action.

Chief Deputy Attorney General Vandenberg also noted in substance that once bidding was opened to the regular correctional officers at Ely State Prison the bidding was conducted as it normally was with respect to seniority of the officers.

Chief Deputy Attorney General Vandenberg added in substance that the State of Nevada, Board of Examiners had approved the critical labor shortage program, and that the Board of Prison Commissioners had quite a bit of leeway to determine how the critical positions were to be filled.

³ The Committee members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt), who chaired the meeting; Jennifer Bauer (SPCSA), Sherri Thomson (DETR) and Turessa Russell (UNLV). EMC Hearing Clerks, Kara Morris and Zina Cage, and Counsel for the EMC, Deputy Attorney General Robert A. Whitney, were also present.

Mr. Gaida argued in substance that clearly an act, omission or occurrence constituting an injustice occurred in this matter, and that the employer in its motion had cited to the facts constituting Ms. Boone-Sharp's grievance when it noted that Ms. Boone-Sharp had stated she "and others were pushed 5 + spots back."

Mr. Gaida stated in substance that because of NDOC's actions, Ms. Boone-Sharp could not bid for the posts taken by the retirees from the critical labor shortage program.

Mr. Gaida noted in substance that Administrative Rule ("AR") 301 provided no guidance as to how critical labor shortage positions would be filled, and that it did state that the warden could assign positions, but that this was based on correctional officer posts that were for permanent employees or trainees.

The Committee, after having read and considered all of the documents filed in this matter, and after having heard oral arguments, deliberated on the issues presented.

Chair Hagler stated in substance that she did not think that anyone present did not believe that the critical labor program created a "wrinkle" for NDOC, but that she still did not see that there was an actual grievance that occurred to Ms. Boone-Sharp.

Chair Hagler also noted in substance that there was a memorandum that went out stating that the critical labor shortage positions would be assigned, and that NRS 284.020 allowed the agency to run its operations as it saw fit.

Member Bauer asked Ms. Boone-Sharp in substance what post Ms. Boone-Sharp bid for and what post Ms. Boone-Sharp received.

Ms. Boone-Sharp indicated in substance that when it came time for her to bid, the tower posts were all gone, so that she could not bid on a tower post, so Ms. Boone-Sharp bid on another post instead.

Ms. Boone-Sharp indicated in substance that she was informed that the tower posts had already been assigned to the retirees, and that the post which Ms. Boone-Sharp received was not the post she initially wanted.

Member Thompson stated in substance that she did not see where NDOC had violated its policies or procedures, so it appeared that NDOC did what it was legally authorized to do.

Member Russell added in substance that she was not clear as to when the assignments of posts to the temporary staff [retirees] would be made, and that it was not clear to her whether or not a violation had occurred.

Member Russell noted that when AR 301, along with the critical labor shortage program, were looked and reevaluated she believed that this "gray area" would be taken out of the process.

Chair Hagler also noted in substance that she did not see where Ms. Boone-Sharp met the definition of a grievance under NAC 284.658.

Member Bauer stated in substance that she thought the issue before the Committee was an important issue that needed to be addressed, but that there was recognition on NDOC's part that the issue needed to be addressed.

Member Bauer also added in substance that she did not see where an injustice had occurred in Ms. Boone-Sharp's case, and that if the Committee was going to rely on its previous decisions she did not see where the Committee could move forward with Ms. Boone-Sharp's grievance.

The Committee voted⁴ to grant NDOC's motion to dismiss based on NAC 284.658 (grievance defined) and prior Committee decisions regarding actual injustice to the grieved employee.

MOTION: Moved to grant Motion to Dismiss based on NAC 284.658 (grievance defined) and prior Committee decisions regarding actual injustice to the grieved employee.

BY: Member Jennifer Bauer

SECOND: Member Sherri Thompson

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

9. Public Comment

There was no public comment in the South.

There was public comment in the North from Mr. Gaida.

Mr. Gaida stated the importance and understanding of why these are brought to the attention of the committee, is that AR 301 is specific on how things are laid out in the institution.

Mr. Gaida stated a lot of these problems would be resolved if communication from the chain of command would be articulated in a more fair and consistent manner.

Mr. Gaida stated there's the Critical Labor Shortage Program, we understand that, but there is no clarification or mechanism that's described for officers or staff or each institution, it's like working at different departments.

Mr. Gaida stated if it was clarified, and done in a manner that seemed equitable, fair and consistent as to how positions were assigned, the majority of these grievances and issues would be resolved.

Mr. Gaida stated this would be because there are a lot of misperceptions on how the shift bid is conducted, there is an exemption process but it's not always adhered to the way it's laid out.

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

Mr. Gaida stated it's mostly for correctional officer trainees and in Ely State Prison, they lay it out for the warden exempt positions and exactly the requirements of why those were exempted, this is not done at NNCC.

Mr. Gaida stated at NNCC this was not done, warden exempt positions were just 'put out there', there were no requirements as to why they were exempted, what was going on, they were just assigned.

Mr. Gaida stated even in the AR, it says why they're supposed to be exempted, yet that is not followed.

Mr. Gaida stated when you bring this to the attention, there is no response and that is a major issue.

Mr. Gaida stated with the Critical Labor Shortage Program, you have retirees that come in, the understanding was the retirees were going to take vacant positions, so *after* the shift bid was done, the retirees would be assigned.

Mr. Gaida stated at least that was the understanding, nothing was clarified one way or the other and there is no mechanism in the AR for that.

Mr. Gaida stated the revision that is coming forward in AR 301 does not resolve that issue either because it does not put in a mechanism of how those are going to be assigned.

Mr. Gaida stated that is a major issue and why these grievances were brought forward in the manner they were

10. Adjournment

Chair Hagler adjourned the meeting at approximately 12:28 pm.