



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
100 N. Stewart Street, Suite 200 | Carson City, Nevada 89701
Phone: (775) 684-0135 | <http://hr.nv.gov> | Fax: (775) 684-0118

Meeting Minutes of the Employee-Management Committee
February 22, 2018

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 2135, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 4412, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler–Chair	
Ms. Pauline Beigel	
Mr. Guy Puglisi	
Ms. Sandie Ruybalid	X
Mr. Ron Schreckengost	X
Ms. Jennifer Bauer	
Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	
Ms. Adria White	
Ms. Sonja Whitten	X

Staff Present:

Mr. Greg Ott, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Zina Cage, EMC Hearing Clerk

1. Call to Order

Co-Vice Chair Ruybalid called the meeting to order at approximately 11:00 am.

2. Public Comment

There were no comments from the audience or Committee Members.

Co-Vice Chair Ruybalid opened the meeting with Committee introductions.

Co-Vice Chair Ruybalid stated grievance #5527 of John Salmon, Department of Taxation, had been withdrawn, and therefore stricken from the agenda.

3. Adoption of the Agenda – Action Item

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

MOTION: Moved to approve the agenda.

BY: Member Turessa Russell

SECOND: Member Ron Schreckengost

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

4. Discussion and possible action related to Motion to Dismiss Grievance #5268 of Yolanda Fernandez, Department of Employment, Training and Rehabilitation – Action Item

Personnel Officer III, Brian Boughter, represented the Nevada Department of Employment, Training and Rehabilitation (DETR). Grievant Yolanda Fernandez was present and represented by American Federation of State, County and Municipal Employees Representative Jeanine Lake.

DETR argued that the Committee has previously refused to gear grievances regarding evaluations unless punitive language has been used and references decision #14-17, and #18-10. DETR further argued that the performance evaluation that was objected to was a “meets standards” evaluation, therefore there is no basis to object to it. Thus, the grievance should be dismissed without a hearing based on prior decisions.

Ms. Lake argued that because the performance evaluation was below standards in job element #1, the evaluation is subject to a grievance for a wrongful evaluation.

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 Whitten stated that the grievance should be heard and moved to deny DETR’s motion to dismiss.¹ Member Whitten’s motion failed to carry a majority.² No other member made a motion that was capable of gaining a majority of votes. Without a majority voting in favor of the agency motion to dismiss, the motion failed, and the matter proceeded immediately to a full hearing.

MOTION: Moved to deny the agency’s Motion to Dismiss.

¹ Turessa Russell seconded.

² The vote on the motion was 2-2.

BY: Member Sonja Whitten
SECOND: Member Sherri Thompson
VOTE: The vote failed to carry a majority, the motion failed.

5. Discussion and possible action related to Grievance #5268 of Yolanda Fernandez, Department of Employment, Training and Rehabilitation – Action Item

Regarding the grievance filed by Yolanda Fernandez (“Grievant”). Grievant was present and represented by Jeanine Lake of the local 4041st division of the American Federation of State, County and Municipal Employees. Nevada Department of Employment, Training and Rehabilitation (“Employer”) was represented by Brian Boughter, Personnel Officer III.

The exhibits submitted to the EMC prior to the hearing were marked and admitted into the record without objection. Grievant, Ron Fletcher and Robert Borja were sworn and appeared at the hearing.

STATEMENT OF THE CASE

Grievant Yolanda Fernandez is employed by the Nevada Department of Employment, Training and Rehabilitation as a Workforce Services Representative III. Grievant received her Annual Employee Appraisal & Development Report on July 19, 2017 and requested a review on August 1, 2017 because she was unsatisfied with certain portions of the evaluation. She claims that she was improperly compared to other Workforce Services Representatives because her job duties were more expansive and her duties as an interpreter caused her to have less opportunity to achieve numerical goals due to her status as Spanish speaker, which caused her to work with a more challenging population.

Grievant further objects to a sentence in her evaluation stating that a paragraph regarding job element #10 regarding her ability to conduct herself in a courteous and professional manner with co-workers and customers. She was rated as meets standards in this job element but claims the paragraph on the evaluation lacked a solid basis. The employer contends that Grievant’s multiple assignments did not inhibit her ability to meet her job placement goal and the comments in evaluation for standard #10 were appropriate and accurate and the grievance should be denied.³

Grievant testified that she was the only bilingual Workforce Services Representatives (“WSR”) of the Las Vegas Nevada Job Connect Office and that her bilingual status caused her to be assigned to a community that is hard to place and thus the job placement goals for her were not fair and were unreasonable. She testified that she was able to meet placement standards previously when there were multiple bilingual workforce services representatives, but was unable to meet her goal only when she was the only

³ Employer’s made a Motion to Dismiss the Grievance because the EMC has previously refused to hear grievances regarding evaluations unless punitive language was used, and this evaluation showed the employee meeting standards. Employer’s Motion was not granted as the EMC was unable to reach a majority to act on the Motion to Dismiss.

bilingual WSR. She testified that her ability to meet the standards was impaired because she had to spend time performing interpreting services for others, and that she spent roughly 50% of her time with Spanish speaking clients, who were more difficult to place because fewer jobs were available to them. She further testified that she believed the workplace to be unsafe because workers who had to interact with belligerent clients were not supported by management.

Ron Fletcher, Employment Security Division Manager IV, testified that the placement goal of 65 placements per year has been in place for 10 years and is used uniformly for WSR's, except those working with veteran services. He testified that there was no reason to adjust Grievant's expectations because only 15% of the over one thousand interviews that she had during the rating period required language services. Veteran's representatives have lesser goals because they serve only veterans and the goal of 65 placements would be almost impossible to meet with those limitations.

Robert Borja, Employment Security Division Manager II, was Grievant's immediate supervisor and testified that it is very difficult to have written procedures for dealing with difficult customers, and that staff meetings were considered training processes regarding communication skills. He further testified that many contentious issues with clients were caused by the office's internet policy which limited internet time and printing. The office's decision to relax those restrictions had decreased difficult situations between staff and customers.

DECISION

The Committee reviewed the evidence; considered the statements of the witnesses and the arguments of counsel, and the parties; and deliberated on the record. The Committee expressed concern regarding the safety issues raised by the Grievant, noted that additional training regarding diffusing difficult situations could be warranted, and that the relaxation of the internet policy seemed to have alleviate some of the safety issues.

The Committee addressed the Grievant's two concerns separately. With regard to the first concern, the Committee voted not to adjust the grievance as to element one of her evaluation because grievant failed to establish that a differential standard was warranted for her job class, the appraisal met standards, and the grievant failed to demonstrate that the agency violated statute, regulation or policy in this matter.⁴

The Committee similarly denied the Grievant's concerns regarding paragraph 3 of item #10 of the evaluation because while the Committee found the Grievant's safety concerns compelling, the Committee lacked the authority to require the agency to offer training to remedy the communications difficulties that would be the most appropriate remedy for grievant's concerns.⁵

⁴ Ron Schreckengost moved and Tuessa Russell seconded. The Motion carried 3-1, with Sonja Whitten voting against.

⁵ Tuessa Russell moved and Ron Schreckengost seconded. The Motion carried unanimously.

MOTION: Moved to deny grievance #5268 based on the employee appraisal meets standards, there is no differential standard warranted for the employee's job classification, and the grievant failed to show where the agency violated statute or policy.

BY: Member Ron Schreckengost

SECOND: Member Turessa Russell

VOTE: The vote was three to one, with Member Whitten voting against.

MOTION: Moved to deny the safety concerns in grievance #5268, although compelling, the EMC does not have the authority to order the agency to offer training.

BY: Member Turessa Russell

SECOND: Member Ron Schreckengost

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

6. Discussion and possible action related to Grievance #5401 of Alan Lafferty, Department of Transportation – Action Item

Co-Vice Chair Ruybalid opened the Committee for discussion.

Member Schreckengost stated this grievance was straightforward.

Member Schreckengost stated the grievant is asking for something in his resolution the EMC simply does not have the authority to grant, and therefore, outside the EMC jurisdiction.

Co-Vice Chair stated she agreed and noted the employer has since resolved the initial issue and provided the first aid kits in the vehicles, according to the escalated steps in the grievance.

Member Schreckengost moved to dismiss the grievance based on lack of jurisdiction, the EMC does not have the authority to grant what the grievant is requesting.

Member Whitten seconded Member Schreckengost's motion.

MOTION: Moved to deny grievance #5401 based on lack of jurisdiction.

BY: Member Ron Schreckengost

SECOND: Member Sonja Whitten

VOTE: The vote was 3 to 1 with Member Russell voting against.

Member Russell requested in the future, the Committee has more deliberation once the motion is on the table.

Member Russell stated the reason she opposed the motion was due to the way it was worded, that as a Committee, the EMC is not limited to the proposed resolution.

Member Russell stated had the motion been, paperwork wise, ‘the grievance appeared to be resolved’ or ‘the employer has provided the first aid kits’, she would not have had a problem with the motion.

Member Russell stated as a Committee, if the EMC starts limiting themselves to proposed resolutions, it would be a major disservice to the process that the EMC is supposed to be providing.

Co-Vice Chair Ruybalid stated she appreciated Member Russell’s comments and agreed that would be a concern.

Co-Vice Chair Ruybalid stated as there was a motion that had passed, the Committee had to move forward.

Mr. Ott stated that since there had been a motion and the motion had passed, the item had been disposed of.

Mr. Ott stated the comments were well taken as the Committee learns to work together, those sorts of things are well identified for future meetings, future motions and future deliberations.

7. Public Comment

There were no comments from the audience or Committee Members.

8. Adjournment

Co-Vice Chair Ruybalid adjourned the meeting at approximately 1:15 pm.