



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
March 8, 2018

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3138, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 4401, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives

Ms. Mandy Hagler–Chair
Ms. Pauline Beigel
Mr. Guy Puglisi
Ms. Sandie Ruybalid
Mr. Ron Schreckengost
Ms. Jennifer Bauer

Present

X
X

Employee Representatives

Mr. Tracy DuPree
Ms. Turessa Russell
Ms. Sherri Thompson
Ms. Adria White
Ms. Sonja Whitten

X
X

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
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 Sonja Whitten
SECOND: Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

4. Approval of Minutes for January 25, 2018 – Action Item

Chair Hagler requested a motion to adopt the minutes.

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

5. Approval of Minutes for February 8, 2018 – Action Item

Chair Hagler requested a motion to adopt the minutes.

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

6. Discussion and possible action related to Grievance #5415 of Sharron Sommervold, Department of Corrections – Action Item

This matter was heard before the Employee-Management Committee (“EMC”)¹. Sharon Sommervold (“Ms. Sommervold” or “Grievant”) was present in Pro Per. The Nevada Department of Corrections (“NDOC”) was represented by NDOC Human Resources Manager David Wright (“Mr. Wright”).

Both parties submitted exhibits, and there were no objections to the exhibits.

¹ The EMC members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt), who chaired the meeting; Sherri Thompson (DETR), Pauline Beigel (NDOT) and Sonja Whitten (DHHS). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, EMC Coordinator, Nora Johnson and EMC Hearing Clerk, Zina Cage were also present.

STATEMENT OF THE CASE

Grievant filed her grievance in order to contest what she viewed as NDOC's removal of correctional officers from their bid on posts without the authority to take such action. Grievant was also contesting NDOC's interpretation of "no-contact", and in substance alleged that "no-contact" should include visual and verbal contact, in addition to physical contact, and that NDOC had in fact used such a definition of "no-contact" in 2009 when she was put on no inmate contact and escorted off of the Ely State Prison grounds. Grievant stated in substance that now NDOC was saying that "no-contact" actually allowed for contact with inmates, since NDOC was allowing correctional officers placed on "no-contact" with inmates to work in places such as the "bubble" and "the tower," which allowed for inmate contact with correctional officers.

Grievant further argued in substance that there were no NRS', NAC's or AR's (Administrative Regulations) that dealt with no inmate contact when a correctional officer was on "no-contact" with inmates for medical purposes.

Mr. Wright stated in substance that Grievant was correct in that another NDOC employee was temporarily put into her post, thus displacing Grievant, but that the particular situation described by Grievant that occurred in 2009 was different than the situation that resulted in Grievant being temporarily placed into another position in November 2017.

Mr. Wright in substance noted that the situation resulting in Grievant being temporarily moved from her post on November 16, 2017 did not involve a medical no inmate contact, but instead involved an investigative no inmate contact.

Mr. Wright also noted in substance that this distinction had ramifications as far as where a correctional officer could work.

Mr. Wright added in substance that NDOC had determined that the post tower (Grievant's regular post) had been determined by NDOC to be a no inmate contact post, and that NDOC had the authority to make this determination. Mr. Wright said in substance that no inmate contact could actually involve different amounts of contact with correctional officers depending on the situation, and that no inmate contact for medical purposes was different than no inmate contact for investigative purposes.

Mr. Wright also said that under the AR's, in particular AR 301, NDOC could move correctional officers for several reasons, and that NDOC did not violate any statutes, regulations or AR's in this matter when it temporarily moved Grievant.

FINDINGS OF FACT

Based upon the arguments made by the parties, the briefs, evidence and other documents on file in this matter, the EMC makes the following findings of fact. All findings made are based on the preponderance of the evidence.

1. Grievant is a correctional officer with NDOC.
2. Grievant works at the Ely State Prison.
3. NDOC has AR's, in particular AR 301.3 and AR 301.4, which deal with the assignment and reassignment of correctional officers from their normal posts.
4. AR 301.3 states in substance that NDOC can assign a correctional officer under investigation to a different shift, post or regular day off until the investigation is concluded, and the correctional officer is exonerated and returns to his or her original post or further action is taken on the matter.
5. AR 301.4 in substance states that NDOC may temporarily reassign correctional officers [other than the correctional officer under investigation] to cover different posts until the correctional officer under investigation is exonerated or until the position of the correctional officer who was under investigation is permanently filled.
6. On November 16, 2017, Grievant was removed from her tower post as a result of a no inmate contact placed upon another correctional officer under investigation.
7. The amount of actual contact that a correctional officer placed on no inmate contact may have with an inmate may vary depending on the reason for no inmate contact.

CONCLUSIONS OF LAW

1. For this grievance, it was Grievant's burden to establish that NDOC's decision to remove her from her post on November 16, 2017 was contrary to law, or that the decision was arbitrary and capricious, or an abuse of discretion. NRS 233B.135.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. A grievance is any act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between and employer and employee. NRS 284.384(6).
4. Ms. Sommervold's grievance falls within the EMC's jurisdiction under NRS 284.073(1)(e).
5. NDOC has the discretion to conduct and manage its affairs as it sees fit. See NRS 284.020.
6. Therefore, NDOC had the right to establish AR's that deal with the temporary assignment of correctional officers under investigation and the temporary reassignment of other correctional officers.
7. NDOC has in fact established AR's dealing with the assignment of correctional officers under investigation and the temporary

- reassignment of correctional officers in connection with investigations in order to cover posts.
8. NDOC's reassignment of Grievant for one shift was done pursuant to AR 301.3 and 301.4.
 9. NDOC's reassignment of Grievant on November 16, 2017 to a different post which was not her normal assigned post was not arbitrary or capricious or an abuse of discretion.
 10. NDOC has the discretion pursuant to NRS 284.020 to determine the parameters of no inmate contact for its correctional officers.
 11. Grievant failed to meet her burden of proving that NDOC's reassignment of her on November 16, 2017 was arbitrary and capricious, or unsupported by substantial evidence, or was an abuse of discretion.

DECISION

Based upon the evidence in the record, and the foregoing findings of fact and conclusions of law, and good cause appearing therefore, it is hereby **ORDERED**:

Ms. Sommervold's grievance is hereby **DENIED**.²

MOTION: Moved to deny grievance #5415 as the grievant did not show how they had been grieved, and the agency did not violate AR 301.04.2a.

BY: Member Pauline Beigel

SECOND: Member Sonja Whitten

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

7. Discussion and possible action related to Grievance #5418 of Jeffery Snell, Department of Business and Industry – Action Item

Jeffery Snell ("Mr. Snell" or "Grievant") was present in Pro Per. The State of Nevada, Department of Business and Industry ("B & I") was represented by State of Nevada, Office of the Attorney General, Senior Deputy Attorney General Theresa Haar ("Senior Deputy Attorney General Haar").

Both parties submitted exhibits, and there were no objections to the exhibits. B & I Safety Supervisor Tristan Dressler ("Mr. Dressler"), State of Nevada, Department of Administration, Division of Human Resource Management ("DHRM") Personnel Analyst III Rachel Baker ("Ms. Baker") and Division Administrator of Industrial Relations of B & I Joseph Decker ("Administrator Decker") were sworn in as witnesses and testified at the hearing.

STATEMENT OF THE CASE

²Member Beigel's motion was seconded by Member Whitten and carried by a unanimous vote.

Grievant filed his grievance in order to contest the denial of an NPD-4 form filed on his behalf by B & I. Grievant applied for the position of Safety Specialist and was assigned to the position on June 12, 2017. Grievant in substance stated that the NPD-4 was offered by B & I as an incentive to apply for the position because the Safety Specialist position was a hard to fill position, as there were no other staff qualified for the position.

Mr. Dressler testified in substance that B & I had tried to fill the Safety Specialist position and had been unable to do so, and therefore it was decided that an NPD-4 would be submitted to try and accelerate steps as an incentive to try and get qualified applicants to apply for the Safety Specialist position.

Senior Deputy Attorney General Haar in substance argued that pursuant to NAC 284.204, there was a process for applying for and granting step increases. Senior Deputy Attorney General Haar in substance stated that the appointing authority was required to determine the fiscal feasibility of the NPD-4 request to accelerate steps and whether or not a disparity between employees would be created if the NPD-4 form was granted. Senior Deputy Attorney General Haar noted in substance that the NPD-4 form was then reviewed by the DHRM, which had to confirm that the request to accelerate steps was fiscally feasible, and that finally, the NPD-4 had to be reviewed and approved by the Governor's Office.

Senior Deputy Attorney General Haar argued in substance that B & I was unable to meet the requirements set forth in NAC 284.204, in that granting Grievant's NPD-4 request would have created a disparity between employees at B & I, and that the request was determined not to be fiscally feasible, and so was denied.

Ms. Baker testified in substance that she was familiar with the requirements of NAC 284.204, and that once she received an NPD-4 request she reviewed the basis for the request to make sure that the requirements of NAC 284.204 were met. Ms. Baker stated in substance that if a current State employee wanted to move to another class and requested accelerated steps the NPD-4 request would have to be justified on an equity basis. Ms. Baker noted in substance that if she had any concerns with an NPD-4 request she brought them to the attention of the requesting agency.

Ms. Baker also testified in substance that she used a hearing matrix in order to confirm whether or not an agency's determination of whether an inequity would or would not exist as a result on granting or denying a request to accelerate steps was accurate.

Administrator Decker testified in substance that he was familiar with the NPD-4 form and the process for requesting accelerated steps. Administrator Decker also testified in substance that he discussed the merits of Grievant's NPD-4 form with Deputy Division Administrator

Jesse Lankford, and that he decided to submit the NPD-4 form to the B & I Director's Office. Administrator Decker stated in substance that the Director's Office then discussed the NPD-4 form with DHRM.

Administrator Decker also testified in substance that after the Director's Office discussed Grievant's NPD-4 form with DHRM, he received an email from DHRM stating that if Grievant's NPD-4 form was approved it would result in an inequity among B & I employees, and that the Grievant was currently at the appropriate step in his position. Administrator Decker noted in substance that once DHRM determined that there would be an inequity if the request to accelerate steps was granted for Grievant B & I followed DHRM's recommendation and denied Grievant's NPD-4 form/request to accelerate.

FINDINGS OF FACT

Based upon the testimony of witnesses, the arguments made by the parties, the briefs, evidence and other documents on file in this matter, the EMC makes the following findings of fact. All findings made are based on the preponderance of the evidence.

1. Grievant is a Safety Specialist with B & I.
2. Grievant applied for the Safety Specialist position and was assigned to the position on June 12, 2017.
3. As an incentive to apply for the Safety Specialist position, B & I had offered to submit an NPD-4 form in order to attempt to accelerate Grievant's steps.
4. B & I, pursuant to NAC 284.204, completed the NPD-4 form on behalf of Grievant and submitted the form to DHRM.
5. DHRM determined, after a review of the NPD-4 form, that granting Grievant an increase in steps pursuant to the NPD-4 form would create an inequity within B & I.
6. As a result, DHRM recommended that the request to accelerate Grievant's steps be denied.
7. B & I, after receiving DHRM'S response, followed DHRM's recommendation and denied the NPD-4 form/request.

CONCLUSIONS OF LAW

1. It was Grievant's burden to establish that B & I's decision to follow DHRM's recommendation and deny Grievant's request to accelerate his steps was arbitrary and capricious or an abuse of discretion.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. A grievance is any act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between and employer and employee. NRS 284.384(6).
4. Mr. Snell's grievance falls within the EMC's jurisdiction under NRS 284.073(1)(e).

5. B & I has the discretion to conduct and manage its affairs as it sees fit. See NRS 284.020.
6. NAC 284.204 sets forth the appropriate procedures for an appointing authority to follow when an NPD-4 form is submitted in order to request to accelerate an employee's steps, and that regulation also sets forth the circumstances necessary for an acceleration of steps to be granted.
7. DHRM's determination that granting Grievant's NPD-4 form would cause an inequity within B & I, and thus should not be granted pursuant to NAC 284.204, was not arbitrary and capricious, nor an abuse of discretion.
8. B & I's decision to follow DHRM's recommendation that Grievant's NPD-4 form be denied was not arbitrary and capricious, nor was this decision an abuse of discretion or unsupported by substantial evidence.
9. Therefore, Grievant failed to meet his burden of proving that B & I's determination to follow DHRM's recommendation and deny Grievant's NPD-4 form was arbitrary and capricious, was an abuse of discretion or unsupported by substantial evidence.

DECISION

Based upon the evidence in the record, and the foregoing findings of fact and conclusions of law, and good cause appearing therefore, it is hereby **ORDERED**:

Mr. Snell's grievance is hereby **DENIED**.³

MOTION: Moved to deny grievance #5418 based on NAC 284.204, the NPD-4 request did not meet the requirements to approve it.
BY: Member Sonja Whitten
SECOND: Member Pauline Beigel
VOTE: The vote was unanimous in favor of the motion.

1. Public Comment

There were no comments from the audience or Committee Members.

2. Adjournment

Chair Hagler adjourned the meeting at approximately 12:26 pm.

³Member Whitten's motion was seconded by Member Beigel and carried by a unanimous vote.