



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
March 12, 2015

Held at the Bryan Building, 901 S. Stewart St., Tahoe Conference Room, Carson City, Nevada; the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada; and the Nevada Department of Transportation, 1401 E. Aultman St., Conference Room, Ely, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	X
Ms. Mandy Payette–Co-Vice-Chair	
Ms. Bonnie Long	
Ms. Claudia Stieber	
Ms. Allison Wall	X
Ms. Michelle Weyland	X
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	
Ms. Donya Deleon	X
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. Chair Mark Evans:** Called the meeting to order at approximately 9:30 a.m.

2. Public Comment

There were no comments from the audience or from the Committee Members.

3. Adoption of the Agenda – Action Item

Chair Evans requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.

BY: Committee Member Tracy DuPree

SECOND: Committee Member Allison Wall

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

4. Discussion and possible action related to motion to dismiss of Grievance #3325 of Debra Boone-Sharp, 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 Department of Corrections (“NDOC”) which was represented by Deputy Attorney General Brandon Price (“Mr. Price”). Debra Boone-Sharp (“Ms. Boone-Sharp” or “Grievant”) was present in proper person.

NDOC stated that Grievant was a correctional officer and worked at Ely State Prison. NDOC stated that on August 10, 2014, at the time of the incident, Grievant had been working a 12-hour shift at the prison gatehouse and that the prison gatehouse was a point of entry for people visiting inmates. NDOC testified that a visitor had arrived at about 9:15 a.m. on August 10, 2014, and when the visitor tried to pass through metal detectors in the gatehouse, she had failed to clear them. NDOC stated that Grievant told the visitor to take everything out of her pockets and to go through the metal detector again. When the visitor failed to clear the metal detectors a second time, NDOC stated Grievant proceeded to perform a pat down search of the visitor and that Grievant discovered a cell phone in the visitor’s pocket. NDOC stated Grievant then directed the visitor to take her cell phone back to her vehicle. NDOC stated that when the visitor had returned and tried to go through the metal detectors a third time and had failed to clear them, Grievant conducted a pat down search of the visitor and determined that the visitor had no contraband and that it was the visitor’s rhinestone shirt that had set off the metal detector.

NDOC stated that Ms. Boone-Sharp had failed to report this incident to the shift sergeant in a timely manner in violation of NDOC’s Administrative Regulation (“AR”) 332.01(1). NDOC stated that this AR required correctional officers to timely notify their supervisors about certain incidents, such as security breaches, unusual incidents, or any information relevant to NDOC’s operations and security. NDOC stated that Ms. Boone-Sharp did report the incident but that Ms. Boone-Sharp had reported it several hours after it occurred and after it was suggested that she do so by another officer. NDOC further stated that as a result of this incident, Associate Warden Michael Fletcher (“Associate Warden Fletcher”) issued Ms. Boone-Sharp a Letter of Instruction (“LOI”) in which

Associate Warden Fletcher had advised Ms. Boone-Sharp that a visitor attempting to pass through security with a cell phone was a matter that was required to be reported up the chain of command in a timely manner. NDOC stated that the LOI also reminded Ms. Boone-Sharp that AR 332 required correctional officers to report unusual events occurring at the correctional facility that were relevant to NDOC's operations and security. Additionally, NDOC stated that on August 13, 2014, Ms. Boone-Sharp was advised that her gatehouse certification, which was required for work in the gatehouse post, had been suspended.

Ms. Boone-Sharp stated she filed her grievance on August 22, 2014. Ms. Boone-Sharp stated she had originally requested reinstatement of her gatehouse certification, rescission of the LOI and removal of the LOI from her personnel file, and that she be permitted to bid for posts in the future without harassment or retaliation.

NDOC stated that during the grievance process Grievant was told that she could retake the gatehouse certification training in order to bid for that post again, that she was free to reapply for any position, including warden exempt positions, and that she would not be subject to harassment or retaliation. Additionally, NDOC stated in substance that pursuant to AR 343.06, the LOI had not been placed in Grievant's personnel file.

NDOC argued that the EMC did not have the authority to review NDOC's decision to suspend Grievant's gatehouse certification and reassign Grievant to another post on the basis that the gatehouse post was, pursuant to AR 301, a warden exempt position which meant that the warden was not required to abide by the shift bidding process and had the discretion, at any time, to remove an officer from working at that post for any reason. NDOC stated in substance that this was due to the importance of the gatehouse post as an entry point into the correctional facility. NDOC further argued that pursuant to NRS 284.020(2), agencies had the authority to conduct and manage the affairs of their department as they saw fit, and that the EMC had previously held that it would generally not put itself in the position of an appointing authority. Additionally, NDOC argued that the EMC would look at whether or not the appointing authority complied with relevant statutes, regulations and policies, as was stated in the Grievance of Victoria Schmader.

NDOC argued that there was simply no relief that the EMC could provide with respect to Ms. Boone-Sharp's gatehouse certification because Ms. Boone-Sharp could not demonstrate that NDOC had violated any statute, administrative regulation or policy by removing her gatehouse certification. NDOC argued that such a removal was entirely discretionary with the warden because the warden had followed the appropriate guidelines and policies.

NDOC argued that historically the Committee had declined to conduct hearings on grievances that challenged the issuance of a LOI since the Committee had decided in previous cases that LOIs were not discipline therefore it had no jurisdiction to hear such grievances. NDOC further argued that pursuant to AR 343.06(2), LOIs did not constitute disciplinary action. NDOC further added in

its rebuttal that there was no issue of progressive discipline in this case and that no document would be placed in Grievant's personnel file.

NDOC also argued that the EMC lacked the jurisdiction to hear the grievance issue of potential harassment or retaliation when bidding for posts in the future. NDOC stated that any employee who felt that they were being subjected to harassment could file a complaint with the Nevada Equal Rights Commission and that the EMC was not the proper forum to hear such matters. Finally, NDOC argued that the EMC did not have jurisdiction to hear Ms. Boone-Sharp's concern about potential harassment and retaliation issues because the concern was about possible future harm which did not constitute a grievance within the meaning of NRS Chapter 284. NDOC also noted that the post bidding had occurred in November 2014, therefore, Ms. Boone-Sharp's complaint concerning possible harassment and retaliation was moot. NDOC concluded by requesting that the grievance be dismissed.

Ms. Boone-Sharp argued in substance that "timely manner" was not specifically defined by NDOC. Additionally, Ms. Boone-Sharp testified that she had reported the incident which had resulted in the LOI within 15 minutes of its occurrence, which was still within her shift, although she stated that her shift sergeant could not get an incident report to Ms. Boone-Sharp until about three hours after the incident occurred. Ms. Boone-Sharp additionally stated in substance that AR 332.24 required that reports be done in a timely manner, not an expedient manner like the LOI alleged. Ms. Boone-Sharp also noted in substance that she had prevented contraband from entering the correctional facility, and that it was not suggested by another correctional officer that she report the incident; rather, she said she had been asked by another correctional officer if she was going to report the incident and she had responded that she was going to. In that regard, she argued, Correctional Officer Hollingsworth had misinformed Lieutenant Hughes and Sergeant Jones that she was not going to report the incident.

Grievant also noted that when the visitor had failed to clear the metal detector, Grievant saw the cell phone in the visitor's pocket, the visitor had not realized it was there, and Grievant had directed the visitor to return the cell phone to the visitor's car. Grievant added in substance that many visitors to the prison forget that they have cell phones with them. Grievant stated she had used a hand scanner to check the visitor, the visitor had no contraband, and that there was no apparent intent by the visitor to introduce contraband into the correctional facility. Grievant further added that the gatehouse post was busy, difficult, and stressful at times, and that small oversights could occur on a daily basis.

Furthermore, Ms. Boone-Sharp stated in substance that she had not received any prior written or verbal warnings prior to this incident and that in this instance the LOI was disciplinary in that she had been removed from her post. Ms. Boone-Sharp also added in substance that similarly, she had been involved in an incident on August 10, 2014, in which another correctional officer had allowed contraband into the correctional facility and no action had been taken by NDOC against that officer. Ms. Boone-Sharp additionally stated in substance that she was aware of a total of three incidents in which other officers had allowed

contraband into the correctional facility and those officers had not been given a LOI, nor were they removed from the gatehouse position and therefore, NDOC's actions towards her were neither fair nor consistent. Ms. Boone-Sharp stated that she felt she had been singled out for discipline for doing her job of preventing contraband from entering the correctional facility and that she had followed the prescribed operating procedures and administrative regulations during this incident.

NDOC argued in substance that the situations with the other correctional officers was irrelevant since it was not known whether or not they had immediately reported the incidents they were involved in to their respective supervisors.

Finally, Grievant stated that she was not seeking to get her gatehouse post back and that she only wanted the LOI removed and her gatehouse certification reinstated.

The Committee, after having read and considered all of the documents filed in this matter and having heard oral arguments, deliberated on the issues presented. Committee Members Tracy DuPree and Allison Wall voiced that although they understood that the warden had the discretion to operate the facility, and that a LOI was instructional and not punitive, from the perspective of the Grievant, it could look punitive because her certification had been removed and Grievant had been removed from her post. Committee Member Wall additionally stated that although it did not seem fair, because the gatehouse post Grievant was in was a warden exempt post, the warden had the authority to remove Grievant from the gatehouse post in order to maintain a safe facility. Committee Member Michelle Weyland stated that she didn't see anywhere the EMC had jurisdiction.

Chair Evans stated that LOIs were not really disciplinary but were a way for an agency to document in writing that it had told an employee, specifically and in a timely manner, that the employee needed to improve on something; and that it was unknown if all agencies used them. Chair Evans further stated in substance that the EMC needed to be cautious with LOIs so that they do not become a disciplinary action. Additionally, Chair Evans stated in substance that he did not want to get into whether the warden's action of removing Grievant from the gatehouse post was reasonable because that would be entering into management decisions. Committee Member Sherri Thompson stated that she did not believe that the EMC had the authority or the knowledge to reinstate Grievant's certification.

Chair Evans requested a motion.

- MOTION:** Moved to grant the motion to dismiss because the EMC lacked jurisdiction over warden exempt positions and removing Letters of Instruction from files.
- BY:** Committee Member Allison Wall
- SECOND:** Committee Member Sherri Thompson
- VOTE:** The vote was unanimous in favor of the motion.

5. Discussion and possible action related to motion to dismiss of Grievance #3326 of Paul Burke, submitted by the Department of Public Safety, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee by the agency employer Department of Public Safety (“DPS”) which was represented by Deputy Attorney General Brandon Price (“Mr. Price”). Paul Burke (“Mr. Burke” or “Grievant”) was present and was represented by Julie Cavanaugh-Bill (“Ms. Cavanaugh-Bill”).

DPS stated Mr. Burke was a Grants and Project Analyst III in its Division of Emergency Management (“DEM”). DPS argued that the Committee did not have jurisdiction to consider all of the issues included in Mr. Burke’s grievance with the exception of the Written Reprimand issued to Mr. Burke. These issues included Mr. Burke’s request for a copy of DPS’ Office of Professional Responsibility (“OPR”) investigation and findings concerning Mr. Burke’s conduct, copies of all correspondence between Chief Chris Smith (“Chief Smith”) and any National Association for Search and Rescue (“NASAR”) representatives, that a work environment study be initiated on DPS, and that OPR investigate the release of information by Chief Smith to NASAR concerning Mr. Burke.

DPS argued in substance that during the grievance process Mr. Burke was permitted to review the OPR investigative report and findings, that he was allowed to take notes during his review, and that Mr. Burke had reviewed it on September 10, 2014. Therefore, no grievance existed pursuant to NRS 284.384(6) and NAC 284.658 because the opportunity to review the investigative report and findings negated any injustice, and therefore, the Committee did not have jurisdiction to grant Mr. Burke’s request for the report and findings. Furthermore, DPS argued in substance that there was no requirement in statute, regulation, or rule that DPS provide Mr. Burke a copy of the investigative report and its findings. DPS pointed out that there was a provision in NAC 284.655 that addressed this issue, but that the provision dealt with situations where an employee had been suspended, demoted, or terminated, and that even though that situation was not applicable in this case, in cases involving employee suspensions, demotions, or terminations there was no requirement that the employee actually be given a copy of the investigative report.

Additionally, DPS argued that the EMC did not have jurisdiction to order the production of correspondence between Chief Smith and representatives of NASAR. DPS asserted that such communications would not assist the EMC in deciding whether the issuance of the Written Reprimand to Grievant was proper; DPS also argued that it was Grievant’s conduct that was at issue, not Chief Smith’s conduct, and that the proper method to request the documents in question was not through the grievance process but through a Public Records request. DPS stated that Grievant in fact did make such a request and that DPS permitted Grievant to review those documents so the issue was now moot.

DPS also argued in substance that the EMC lacked the authority to compel DPS to perform a work environment study of DEM. Such a request, DPS argued, did not involve an act, omission or occurrence that resulted in an injustice to an employee, and so there was no injustice pursuant to NRS 284.384(6) to Grievant with respect to his request for the work environment study. Furthermore, DPS argued that there was no legal authority which gave the EMC the authority to order an executive review or work environment study of State agencies. DPS also argued in substance that Grievant's citation to NRS 284.073(1)(a) and (b) for the proposition that the EMC could initiate the executive review was misplaced, and that it was clear upon review of this statute that the advisory function of the EMC pertained to matters of personnel administration and relations between management and employees generally, and not to specific cases such as Grievant's case.

Finally, DPS argued that the Committee could not authorize the initiation of an investigation into Chief Smith's conduct because there were no statutes or policies that gave the Committee the authority to authorize the initiation of investigations, and that such authority rested with the appointing authority.

Ms. Cavanaugh-Bill stated that although the Committee could not directly order such action, it was within the Committee's authority and ability to make a recommendation for a work environment study of DEM as well as a recommendation for an OPR investigation of allegations of Chief Smith improperly releasing information.

Ms. Cavanaugh-Bill stated in substance that in regard to the copy of the investigative report, Mr. Burke felt that he should receive a copy of the report, since DPS used it to issue the Written Reprimand, and since allowing Mr. Burke to have a copy would provide him the opportunity to defend himself. Ms. Cavanaugh-Bill further argued that there might be items in the investigative report which she may need discovery on, but would be unable to know without reviewing it. Ms. Cavanaugh-Bill further argued in substance that it was her understanding that the confidential nature of the investigation and investigative report was to protect the employee, and in this case the employee was making the request for the investigative report, and that no harm could be cited by DPS which would be caused by Mr. Burke having a copy of the investigative report. Ms. Cavanaugh-Bill further stated in substance that with respect to the confidential nature of some of these matters, that she would be willing to enter into a protective order with DPS, and that simply taking notes of the investigative report was insufficient.

Ms. Cavanaugh-Bill stated in substance that concerning Chief Smith's correspondence with NASAR, that she and Grievant believed that Chief Smith acted in violation of standing policy and released confidential information. Ms. Cavanaugh-Bill acknowledged that since filing his grievance, Grievant had received some correspondence, but that it was not known if it was the entirety of the correspondence that was requested or that was at issue in the matter, and that furthermore, the correspondence was necessary to determining whether the discipline taken against Grievant was appropriate. Ms. Cavanaugh-Bill additionally argued in substance that the matter not only impacted Grievant's

personnel file, it also impacted his lifetime membership with NASAR and his position as a representative with NASAR, and that this was a large part of Grievant's career. Ms. Cavanaugh-Bill asked that the motion to dismiss be denied.

In its rebuttal, DPS argued that whether or not Grievant was entitled to a copy of the OPR investigative report was something that the Committee would need to determine at hearing if the request survived the motion to dismiss. Additionally, DPS stated in substance that any action taken with respect to Grievant's lifetime membership in NASAR was taken by NASAR and not by DPS. DPS also argued that it was reluctant to release a copy of the investigative report because the reports were confidential and it would set a dangerous precedent of allowing employees to review reports any time they asked to do so. It was also argued by DPS that nowhere in Grievant's grievance did he challenge DPS' work environment.

The EMC, after having read and considered all of the documents filed in this matter and having heard oral arguments, deliberated on the issues presented. Committee Member DuPree voiced concern that the OPR could perform an investigation on an employee and the employee could go in and review the resulting report but could not make copies of the report. Chair Evans pointed out that the OPR investigation and findings copies and copies of all correspondence between Chief Smith and any NASAR representative could be handled by a subpoena if Mr. Burke could provide reasons why he needed that information, and that such information needed to be subpoenaed prior to Mr. Burke's grievance hearing if it was to help the Committee reach a decision at hearing. Chair Evans additionally stated in substance that there were procedures in place at DPS through which Mr. Burke could request an investigation of Chief Smith. Chair Evans and Committee Members Wall and DuPree agreed that they could not require, but recommend, a work environment study, and that the Committee could still be open to hearing about working conditions at DPS. Committee Member Weyland stated that she thought the grievance needed to be heard. Committee Member Thompson stated that she thought the issue of the Written Reprimand should be heard.

Chair Evans requested a motion.

MOTION: Moved to grant the partial Motion to Dismiss with the stipulation that the Committee would schedule a hearing to hear the issues regarding the Written Reprimand and working conditions at DPS because working conditions were within the scope of the Committee's authority.

BY: Chair Mark Evans

SECOND: Committee Member Allison Wall

VOTE: The motion passed with a 5:1 majority vote. Chair Mark Evans, Committee Members Allison Wall, Donya Deleon, Tracy DuPree, and Sherri Thompson voted in favor and Committee Member Michelle Weyland voted against.

6. Public Comment

There were no comments from the audience or Committee members.

7. Adjournment

MOTION: Moved to adjourn.

BY: Committee Member Tracy DuPree

SECOND: Committee Member Donya Deleon

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