



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
April 12, 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 4412E, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler–Chair	
Ms. Pauline Beigel	X
Mr. Guy Puglisi	X
Ms. Sandie Ruybalid	X
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	
Employee Representatives	
Mr. Tracy DuPree	X
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. Kara Morris, EMC Hearing Clerk

1. Call to Order

Co-Vice-Chair Puglisi called the meeting to order at approximately 9:00 am.

2. Public Comment

There were no comments from the audience or Committee Members.

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

3. Adoption of the Agenda – Action Item

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

MOTION: Moved to approve the agenda.

BY: Member Sonja Whitten

SECOND: Member Tracy DuPree

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

4. Discussion and possible action related to Grievance #5463 of Michael Whitfield, Department of Corrections – Action Item

Co-Vice-Chair Puglisi stated normally, grievances from the same grievant would be combined, but as the two grievances of Michael Whitfield were so extremely different, unless the Committee opposed, Co-Vice-Chair Puglisi wanted to discuss them separately.

Member Ruybalid stated the Committee members in the north agreed, and there was no opposition from the members in the south.

Co-Vice-Chair Puglisi stated there would be a few minutes for the Committee to review the first packet.

Co-Vice-Chair Puglisi asked if Denise (Woo-Seymour, Division of Human Resource Management, DHRM) was in attendance.

Co-Vice-Chair Puglisi asked if Ms. Woo-Seymour could offer some clarification.

Co-Vice-Chair Puglisi stated the second paragraph of the grievance mentions the employee was going to be terminated on January 5, 2018.

Co-Vice-Chair Puglisi stated he wanted to confirm there had been no significant change in circumstances, so the Committee was not reviewing and discussing the grievance in vain.

Ms. Woo-Seymour stated as far as she understood, the employee was currently on administrative leave, but was not aware of the actions taken surrounding the employee's placement on administrative leave.

Member Beigel stated the purpose of the meeting was to determine if the Committee should hear this grievance.

Member Beigel stated her understanding of the grievance was a recruitment

dispute and work duties, and that was something that should be under the purview of the EMC.

Member Beigel stated unless anyone had any discussion, she moved to have a hearing on this grievance in the future.

Co-Vice-Chair Puglisi stated normally Committee members are allowed to make comments first.

Co-Vice-Chair Puglisi stated there certainly could be a motion but would leave that to the Committee to guide us.

Member Whitten seconded Member Beigel's motion.

Co-Vice-Chair Puglisi asked if the Committee had any discussion.

Member Ruybalid stated her concern was in the proposed resolution, the employee requested to speak with the Warden and that did occur.

Member Ruybalid stated throughout the remainder of the grievance, the employee is asking to be retrained and reassigned due to losing the ability to remain a sworn peace officer.

Member Ruybalid stated she was not sure what a hearing would accomplish because the employee is no longer qualified to do the job he holds.

Member Ruybalid stated it was her understanding the State is not obligated to retrain the employee because he has lost the ability to maintain his current position.

Member Ruybalid stated she was unclear as to why the agency has not terminated the employee, because this was a class 5 violation of the Prohibitions and Penalties.

Member Ruybalid stated the employee should have been terminated because of the infraction, and it was unclear why the agency was keeping the employee employed, but not in his full capacity.

Co-Vice-Chair Puglisi stated in looking at this grievance, the employee is grieving the fact the agency was going to terminate him because he is no longer certified by the Nevada Commission on Peace Officer Standards and Training.

Co-Vice-Chair Puglisi stated in the agency regulations state, "failure to meet peace officer standards and training is a class 5 violation", which on a first offense, the minimum and maximum action is dismissal, however, that dismissal has not taken place.

Co-Vice-Chair Puglisi stated what the employee was asking for, other than initially asking to speak with the Warden, is to have a fitness for duty evaluation performed and to be retrained for another position.

Co-Vice-Chair Puglisi stated he had noted “the employer is under no obligation to subject the employee to a fitness for duty examination without cause, and there is no workers compensation claim involved, so the employer does not have to evaluate modified work duty.”

Co-Vice-Chair Puglisi also noted “if this violation resulted in demotion, the employer *could* place the employee in another position.”

Co-Vice-Chair Puglisi stated it looked like the agency’s intent to dismiss the employee for cause is valid but wondered if this would fall under ‘the department has the right to run its agency as it sees fit’, at least until the point where the agency has taken action.

Co-Vice-Chair Puglisi stated he did not see where the employee has suffered any hardship because the employee still has his position.

Member DuPree stated when someone is requesting to be retrained because they are unable to do their job, it is usually because of a disability or an injury on the job.

Member DuPree stated this employee lost his ability to carry a weapon, that is not a disability.

Member DuPree stated if we (the State) start saying we will retrain everyone that loses the ability to carry a weapon, and the standard has always been immediate termination if you know that is part of your job, what message are we sending?

Member DuPree stated the employee knew his responsibility to do that job was to carry a gun for the category peace officer that he is, and he didn’t do that.

Member DuPree stated at one time the employee told the Warden he could go to California and get the issue taken care of in court, then stated he (the employee) didn’t want to spend that kind of money.

Member DuPree asked (rhetorically) is it worth your job to spend “that kind of money” and stated it would be worth mine.

Member Beigel stated this meeting was to determine whether the EMC could hear this case, but it seemed they were actually hearing it as opposed to deciding whether or not the EMC could have a hearing down the road.

Member Beigel stated when she looked at the category of recruitment dispute and work duties, that sounds like something this Committee is supposed to handle, which is why she made the motion.

Member Russell stated she was not comfortable in making assumptions on the timelines on when things happened.

Member Russell stated the Committee did not have all the information as to why the grievant is placed on different duties, or when the restraining order

was put into place that removed his ability to carry a gun.

Member Russell stated the Committee did not have that information in the paperwork in front of them and would be more comfortable moving forward to a hearing, so the Committee has the full facts instead of making assumptions.

Co-Vice-Chair Puglisi asked Member Beigel to repeat her motion.

Member Beigel moved to allow grievance to go to hearing before the Committee.

With no further discussion and the motion having been previously seconded by Member Whitten, Co-Vice-Chair Puglisi asked for a vote.

MOTION: Moved to grant hearing for grievance #5463.

BY: Member Pauline Beigel

SECOND: Member Sonja Whitten

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

5. Discussion and possible action related to Grievance #5529 of Michael Whitfield, Department of Corrections – Action Item

Co-Vice-Chair Puglisi requested that if grievance #5529 was moved to hearing that it be scheduled concurrently with grievance #5463.

Member DuPree stated the proposed resolution is the employee be granted leave and asked if that was even a question since the employee was on administrative leave, and thus the leave has been granted?

Co-Vice-Chair Puglisi stated he questioned what kind of relief the EMC could offer on a leave denial for a date in the past.

Co-Vice-Chair Puglisi stated he also observed hostile work environment and some medical conditions were mentioned throughout the grievance.

Co-Vice-Chair Puglisi stated if the grievance is talking about discrimination, hostile work environment and Americans with Disabilities Act (ADA), the EMC would not have jurisdiction over those issues.

Member Beigel asked if the Committee has entertained leave denial requests in the past.

Co-Vice-Chair Puglisi stated he recalled previous hearing where the type of leave was subject to scrutiny; where leave without pay was used in lieu of sick or annual leave but could not recall if there had been hearings where leave had been denied.

Co-Vice-Chair Puglisi stated there were obvious facts missing from the grievance, as it appeared the leave was requested for a past date and the date was not specified in the grievance.

Co-Vice-Chair Puglisi stated that as the Committee should not make assumptions, he was inclined to lean towards a hearing for this grievance.

Member Ruybalid stated she agreed but the Committee would need to separate the hostile work environment and not discuss that piece.

Member Ruybalid stated it looked like the grievant requested a transfer and if that transfer was not granted, then the grievant was placed on leave as his proposed resolution.

Member Ruybalid stated it was not clear if the grievant requested leave and the leave was actually denied.

Member DuPree moved to move the grievance forward to hearing.

Member Beigel seconded the motion and added it be combined with the previous grievance as requested by Co-Vice-Chair Puglisi.

Co-Vice-Chair Puglisi restated the motion and the request to hear grievance #5463 and #5529 concurrently and asked if there was any discussion on the motion.

There was no discussion on the motion.

MOTION: Moved to grant hearing for grievance #5529.
BY: Member Tracy DuPree
SECOND: Member Pauline Beigel, who added that grievance #5463 and grievance #5529 be heard at the same hearing
VOTE: The vote was unanimous in favor of the motion.

6. Discussion and possible action related to Grievance #5539 of Alya Baraka, Department of Corrections – Action Item

Co-Vice-Chair Puglisi stated there would be a few minutes for the Committee to review the packet.

Co-Vice-Chair Puglisi stated he had a question for Ms. Woo-Seymour (DHRM).

Co-Vice-Chair Puglisi stated at the end of the grievance, the employee states “there are other avenues, resources that I am currently working with using, and as advised, I chose not to discuss them.”

Co-Vice-Chair Puglisi stated he wanted to make sure that DHRM was not aware of any other action going on in a different venue, in order to give the Committee clarity on what action to take on this grievance.

Ms. Woo-Seymour stated DHRM was not aware of any other avenue the employee was taking at this time.

Member DuPree stated the employee is saying her work performance standards were amended and they were going to get those amendments

approved by the last Legislature but didn't do that.

Member DuPree stated the issue was an employee is being held to a set of work performance standards that have not yet been approved, and based on that, the Committee needs to hear the grievance.

Co-Vice-Chair Puglisi stated he felt the grievance should be scheduled for a full hearing unless it was being heard in another venue because there are too many facets to this grievance.

Co-Vice-Chair Puglisi stated there were also clinical issues involved, and no one on the Committee are experts on the administration of drugs and those types of procedures.

Co-Vice-Chair Puglisi stated there are matters in the grievance that date back to October 13, 2017 and the discovery date on the grievance is January 13, 2018.

Co-Vice-Chair Puglisi stated if this grievance does go to hearing, it should be restricted to the 20 working days before the date of discovery which is on or about December 15, 2017.

Co-Vice-Chair Puglisi stated with the comment "there are other avenues and resources that are currently being worked on", if the Committee does hear the grievance, it may change what could be presented but the Committee would have to wait until the evidentiary packets are admitted to determine that.

Member Ruybalid stated she had a question for Ms. Woo-Seymour (DHRM).

Member Ruybalid stated one of the issues the employee is grieving is her evaluation and recently we (the State) have updated the Nevada Administrative Code (NAC) and/or Nevada Revised Statute (NRS) that if an evaluation is not overall below standard it is not grievable.

Member Ruybalid asked how that would apply.

Ms. Woo-Seymour stated the regulation being referenced had gone through Regulations Workshop for comments from the public and is currently at preadoption review before the Legislative Counsel Bureau (LCB) and has not been adopted by the Personnel Commission as of date.

Member DuPree moved the Committee bring this matter to a full hearing.

Member Whitten seconded the motion.

Co-Vice-Chair Puglisi restated the motion and asked if there was any discussion on the motion.

There was no discussion on the motion.

MOTION: Moved to grant hearing for grievance #5539.
BY: Member Tracy DuPree
SECOND: Member Sonja Whitten
VOTE: The vote was unanimous in favor of the motion.

7. Public Comment

There were no comments from the audience or Committee Members.

8. Adjournment

Co-Vice-Chair Puglisi adjourned the meeting at approximately 9:35 am.