



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
April 20, 2017

Held at the Blasdel Building, 209 E. Musser St., Room 105, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

| Management Representatives | Present |
|-----------------------------------|----------------|
| Ms. Mandy Hagler–Chair | X |
| Ms. Pauline Beigel | |
| Mr. Guy Puglisi | X |
| Ms. Sandie Ruybalid | |
| Mr. Ron Schreckengost | |
| Ms. Jennifer Bauer | |
| Employee Representatives | |
| Ms. Donya Deleon | X |
| Mr. Tracy DuPree | |
| Ms. Turessa Russell | X |
| Ms. Sherri Thompson | |

Staff Present:

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

- Chair Mandy Hagler:** Called the meeting to order at approximately 9:00 a.m.
- Public Comment**

No public comment in the North. Public comment in the South from Scott Larsen re grievance # 4558. Scott Larsen from the Department of Employment Training and Rehabilitation asked if comment could be made regarding the scheduled grievance. Chair Hagler stated comment

could be made as long as it was kept to five minutes. Mr. Larsen stated he was on the employees that filed grievance #4558 and that the grievance was filed in response to appeal a corrective action plan that was given to us (Larsen et al. #4558) on July 19, 2016. Mr. Larsen continued the corrective action plan made several allegations against the office, including spreading malicious rumors about coworkers, moping on the job, coalition building against targeted individuals, encouraging dislike and poor treatment of others, tardiness and attendance issues, general unprofessional behavior and communication, inconsistency applications of management direction, policies and procedures. Mr. Larsen stated he did not have an issue with the corrective plan being issued against the individuals who committed these violations, however, it is fundamentally unfair to make these allegations against the entire office. Mr. Larsen stated neither him nor anyone he knows has been personally accused of committing these violations. Mr. Larsen concluded by requesting the EMC grant a hearing on behalf of Larsen et al. to address the merits of this case.

Member Russell requested that Mr. Larsen sign in.

Chair Hagler asked if there was any other public comment from the South. Public comment in the South from Angela Klaus re grievance # 4558. Angela Klaus from the Department of Employment Training and Rehabilitation, part Larsen et al. #4558. Ms. Klaus stated that in regards to the corrective action plan, what's done is done, it happened in July. Ms. Klaus stated there was indications of not submitting timely notices and that was a clerical issue as well as a management issue. The other issues, brought up by Mr. Larsen that the notices were issued in mass versus as individuals. As a result, not only is there a corrective action, but the innovative work schedules had been be revoked. Ms. Klaus stated they (Larsen et al.) felt this was fairly punitive and not warranted. Ms. Klaus reiterated that what's done is done and would now like to move forward. Ms. Klaus stated these issues were not addressed during a resolution conference and were never resolved at the lower level. The hope, moving forward, is for these issues to be addressed by the EMC as performance and quality has improved. Ms. Klaus concluded by stating, "We just want to be heard".

Chair Hagler asked if there was any other comment in the South, seeing none, the committee moved on to 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 Donya Deleon

SECOND: Member Turessa Russell

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

4. Approval of Minutes for December 15, 2016 – Action Item

Chair Hagler asked if there was any discussion before approving the meeting minutes for December 15, 2016.

Member Russell noticed an error regarding committee attendance and which committee member made certain comments.

Chair Hagler asked for clarification. Member Russell stated page one of the minutes show Member Tracy DuPree and Member Sherri Thompson in attendance, however, on page six of the minutes, it showed Member Russell made a comment.

EMC Coordinator Nora Johnson stated Member Russell brought the error to the attention of the EMC. Ms. Johnson then stated she did the research on the log notes and minutes from that meeting and verified it was in fact Member Thompson that made the comment as Member Russell was not in attendance. Ms. Johnson stated that with the Committee's approval, the minutes would be corrected and redistributed.

Chair Hagler stated the committee would not approve the minutes. The minutes would have to be corrected and approved at an upcoming EMC meeting.

Attorney General, Greg Ott stated the committee could approve the minutes by making the correction and noting Member Thompson made the comment, not Member Russell.

Chair Hagler made the motion to approve the minutes with the correction of Member Russell to Member Thompson. Member Russell asked if she should restate her motion and Chair Hagler stated the motion should reflect Member Russell approved the minutes with the correction.

MOTION: Moved to approve the minutes of December 16, 2016 with the correction of comments made by Member Turessa Russell to Member Sherri Thompson.

BY: Member Turessa Russell

SECOND: Member Guy Puglisi

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

5. Approval of Minutes for January 12, 2017 – Action Item

MOTION: Moved to approve the minutes of January 12, 2017.

BY: Member Turessa Russell

SECOND: Member Donya Deleon

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

6. Approval of Minutes for January 26, 2017 – Action Item

MOTION: Moved to approve the minutes of January 26, 2017.
BY: Member Donya Deleon
SECOND: Member Turessa Russell
VOTE: The vote was unanimous in favor of the motion.

7. Approval of Minutes for March 17, 2017– Action Item

MOTION: Moved to approve the minutes of March 17, 2017
BY: Member Guy Puglisi
SECOND: Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Grievance #4558 of Scott Larsen et al., Department of Employment, Training & Rehabilitation - Action Item

Chair Hagler opened the committee for discussion.

Member Puglisi stated the grievances have the same proposed resolution of reinstating either flex time or the variable work schedule. The committee had previously determined it does not have jurisdiction over work schedules, most recently Decision 06-17 and prior to that, Decision 10-16. However, there was public comment from two of the parties involved that brought up other issues the committee may have jurisdiction over.

Member Russell stated what made this grievance different from others is it is not just one classification of employee that is filing a grievance, but two to three different classifications of employee. Member Russell also stated, we (the EMC) may not be able to grant the proposed resolution, but may be able to come up with a different resolution that works for all parties.

Chair Hagler stated the memorandum was issued directly to the appeals office, as a corrective action plan and so it was specifically for that department. This has happened before where the directive was not specific to what the employee did or what the employees' position was, it was unilateral in that department. This department was one of the last department to move to a five day workweek from the "4/10" workweek.

Member Russell asked if, in that example, was it different classifications of employee's that grieved the changes to the workweek schedule.

Chair Hagler responded that yes, it was specifically for that department, or unit within that department. Chair Hagler continued the reason for the changes to the scheduled workweek were due to failure to meet federal performance measures for timeliness and being identified "at risk" by the United States Labor

Department. The reasoning for the changes are outlined in the memo. The memo also stated, specifically on page two of three “the privilege of alternate, flexible work schedules may be restored at a point in time when management has determined that the appeals unit is able to maintain a status of high performance and compliance with Federal standards”.

Chair Hagler continued, that while the department does not have to allow the flexible work schedule, the department did state in the memo they are willing to revisit the possibility of a variable work week. Chair Hagler stated this goes back to NRS 284.020 (2), which allows the Administrator to handle the business of their agency as they see fit.

Member Deleon stated she agreed with the statute, and asked if mediation had been requested. Chair Hagler responded there had been a resolution conference but they had not come to an agreement.

Member Deleon asked if there was some way to build up morale to create a better working relationship.

Chair Hagler responded that the purpose of the EMC hearing was to determine whether or not the EMC has the jurisdiction to hear the grievance, or if previous decisions had been made regarding similar grievances.

Member Deleon stated that the way the grievance was written suggested it may be a whistleblower grievance reading, “It is important to note that some of the undersigned employees who filed grievances proximate to the dissemination to the Administrator’s plan, believe it was retaliatory.

Chair Hagler stated the EMC would not hear that part of the grievance if it moved forward to a hearing, and that there is a Federal avenue for pursuing those issues.

Member Deleon stated she did not feel any statutes had been violated. Chair Hagler stated the EMC needed to determine if there was jurisdiction or whether there had been a previous hearing that is similar to this. Chair Hagler referenced a decision from the Taxicab Authority, where the department had changed the schedules from a 4/10 work week to a Monday through Friday, 8 hours, five days a week schedule. The Taxicab Authority has brought forward two or three grievances where they change the hours and days employees work. Chair Hagler stated The EMC consistently has stated that the director does have the authority to run their agency as they determine for the needs of their business in accordance with NRS 284.020 (2).

Chair Hagler asked if there needed to be further discussion or if anyone was prepared to make a motion.

Member Puglisi referred to the minutes from January 26, 2016 to mirror the motion from 06-17 and moved to deny the grievance because the EMC does not have jurisdiction over this matter. Member Puglisi stated that NRS 284.020 (2) provides the authority of elected officers and heads of departments to conduct the affairs of their departments as they see fit. Member Puglisi also added the

motion is in accordance with prior EMC decisions, decision number 06-17 and 10-16.

MOTION: Moved to deny the grievance based on NRS 284.020 (2) and prior EMC decisions (06-17 and 10-16).

BY: Member Guy Puglisi

SECOND: Chair Mandy Hagler

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

9. Discussion and possible action related to Grievance #4726 of Nathan Echeverria, Department of Corrections – Action Item

Chair Hagler opened the committee for discussion.

Member Puglisi stated there was a similar decision in January (decision number 01-17) regarding light modified duty assignments. Member Puglisi also stated that without actual exhibits and other documentation eluded to in the grievance, he felt the EMC needed to grant a hearing to get to the root of the situation.

Chair Hagler stated if this was a workers compensation case, the EMC does not have jurisdiction over workers compensation. Chair Hagler also stated employees have other avenues for appealing workers compensation decisions. Chair Hagler asked Member Puglisi if the referenced decision (01-17) was modified duty for non-industrial. Member Puglisi responded, the employee could do all of his job duties except physically tackle someone as he was a compliance investigator.

Member Puglisi stated that because the employee could not do the physical job element, the employee was placed on sick leave and wanted his sick leave credited back.

Chair Hagler stated that was non-industrial and in the case on non-industrial, the EMC may have jurisdiction to see if the agency was following the policies and procedures, however, in this case, there is another forum for the employee to appeal the decisions that were made. Chair Hagler reiterated that the EMC does not have jurisdiction over the decisions or over the hearing level and the employee has many levels of appeals, beginning with the hearing officer, to the appeals officer, to District court, up to the Supreme Court all under workers compensation.

Chair Hagler stated that there is no NAC that provides for light duty unless it is under workers compensation and that the employee can appeal using the various avenues previously discussed.

Member Puglisi stated even if the EMC could offer a resolution, that the prescription for the employee's treatment was forty two days and the grievance was filled in October of 2016.

Member Deleon added that the employee's actual grievance was not supported in the documentation.

Chair Hagler stated that whether it's industrial or non-industrial, if an employee is required physical therapy, the employee would have to be released from their employer to attend appointments. That issue would have to be addressed through the employee's physician. The employee was provided light duty based on what the employees physician prescribed as restrictions. Chair Hagler stated she still did not feel the EMC had jurisdiction over this grievance.

Member Deleon and Member Russell both agreed.

Chair Hagler asked if anyone was ready to make a motion.

Member Deleon made a motion to deny grievance #4726 as the EMC does not have jurisdiction, reiterating the employee's other avenues to pursue.

Chair Hagler stated when the decision is sent out, the EMC provide advice as to the available avenues for the employee, then requested a second for Member Deleon's motion.

Member Russell seconded the motion and the motion passed unanimously.

MOTION: Moved to deny grievance #4726 due to lack of jurisdiction.

BY: Member Donya Deleon

SECOND: Member Turessa Russell

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

10. Discussion and possible action related to Grievance #4833 of Christy Coss, Department of Corrections – Action Item

Chair Hagler opened the committee for discussion.

Member Puglisi stated the grievance is a conflict between two employees with the original grievance requesting the employees not be scheduled at the same time. Member Puglisi continued that in step two of the grievance, the grieving employee was reassigned to the shifts at the opposite end of the week, which sounded as though the conflicting employees were now on opposite schedules. Member Puglisi stated that the grievant stated in her last response, "the other person continues to victimize her and that the agency is fostering workplace violence and encouraging it".

Member Puglisi stated if there is harassment happening, there EEO for that. Member Puglisi also stated that based on the grievant's step two response, the original claim of not being scheduled with the other employee had been resolved. Member Puglisi stated that if there was another issue, there would have to be another grievance.

Chair Hagler stated the grievant acknowledged the agency changed her assignment, which is what she had requested. The other avenue, AR 321 is workplace violence and there is another avenue for reporting that.

Member Hagler also stated the other AR 339 is Code of Ethics and Conduct. The EMC does not have the authority to discipline another employee.

Member Puglisi requested clarification regarding AR 321 and AR 339 and asked if that was in the Nevada Administration Code (NAC).

Chair Hagler responded AR (administrative Regulations) are for the Nevada Department of Corrections (NDOC) and can be viewed on the NDOC website. Member Deleon stated that coworker conflict should be addressed through mediation and the EMC was not a proper venue for this grievance.

Chair Hagler stated the grievant was not assigned the same shift due to the current situation with the other employee. The agency granted the grievant's requested resolution and assigned her to a different shift than the other employee. The grievant acknowledged this resolution in her step two response. Chair Hagler stated mediation is available for workplace violence or harassment.

Member Puglisi requested clarification on how to form a motion where the grievance has been resolved.

Chair Hagler stated that could be part of the decision and the rest of the grievance did not fall within the jurisdiction of the EMC as the EMC does not have the authority to mandate an agency to move an employee.

Member Puglisi made a motion to deny grievance # 4833 based on NRS 284.020 (2), the appointing authority has the latitude to schedule employees' as they see fit, however, it is noted the request to have the conflicting employees' scheduled on different shifts had been granted .

Member Russell seconded the motion and the motion passed unanimously.

MOTION: Moved to deny grievance #4833 per NRS 284.020 (2).

BY: Member Guy Puglisi

SECOND: Member Turessa Russell

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

11. Discussion and possible action related to Grievance #4839 and #4840 of Robert Borchardt, Department of Public Safety – Action Item

Chair Hagler opened the committee for discussion.

Member Puglisi stated grievance # 4839 and #4840 were identical and contested a Letter of Instruction (LOI). Based on a previous decision (60-09), a grievance

had been dismissed because an LOI was not disciplinary in nature and was used properly as a coaching tool.

Chair Hagler agreed and stated the grievant agreed with the LOI but did not agree with the subsequent counseling.

Member Russell asked if it was also true the LOI cannot have a statement in future discipline.

Chair Hagler stated there could be progressive discipline from the action of an LOI. An LOI does not take away from the agency's ability to issue progressive discipline.

Chair Hagler asked if further discussion was needed or if the committee was ready to make a motion.

Member Puglisi asked if the grievances were to be motioned together or separately.

Deputy Attorney General Ott, replied the grievances could be done separately, but as there was a common reason for denying both, they could be motioned together.

Member Puglisi agreed he would move grievance #4839 and #4840 together and stated he moved to deny grievance #4839 and #4840 in accordance with NRS 284.020 (2) the EMC does not have jurisdiction over employee coaching and the motion is in accordance with prior decision 60-09.

Chair Hagler stated that before a motion be made, the committee should be opened for discussion. Chair Hagler added the EMC previously determined LOIs are not part of the disciplinary process and cannot be heard in a grievance should be included in the motion.

Deputy Attorney General Ott stated if Member Puglisi adopted that change, grievance #4839 and #4840 both be denied because NRS 284.020 (2) does not grant the EMC jurisdiction over the administration's authority to coach its employees. Complaints regarding LOI's are not part of the disciplinary process and cannot be heard in a grievance in accordance with previous decision 60-09. Member Puglisi stated if the Chair found that acceptable, he would accept that change.

Chair Hagler agreed to the adoption and motion from Member Puglisi and asked for a second.

Member Deleon seconded the motion and the motion passed unanimously.

MOTION: Moved to deny grievance #4839 and #4840 per NRS 284.020 (2) and prior EMC decisions (60-09).

BY: Member Guy Puglisi
SECOND: Member Donya Deleon
VOTE: The vote was unanimous in favor of the motion.

12. Discussion and possible action related to Grievance #4908 of Aaron Dicus, Department of Corrections – Action Item

Chair Hagler opened the committee for discussion.

Member Deleon requested clarification the EMC does not have the authority to change NDOC AR's and Chair Hagler replied no, the EMC does not have that jurisdiction.

Member Puglisi stated the regulation is about factory sealed, clear containers and that items must be placed in a clear container if the factory sealed container is not a clear container.

Chair Hagler stated the regulation is made very clear in the AR as to what kind of containers can be brought in and read the AR to the committee:

AR 422.03 Clear Bags/Clear plastic Containers/Factory Sealed Clear Containers

“In order to maintain the safety and security of the Nevada Department of Corrections (NDOC) facilities and to detect and prevent entrance of contraband: All persons entering shall only possess clear PVC bags and containers (unless otherwise approved by the Warden or Associate Warden). All food must be in a clear container that can be visually inspected and searched if needed. Paper bags sacks and sandwich wraps (including wrappers from fast-food restaurants or similar establishments) are prohibited. Open beverages (including fountain drinks and coffee) shall be in a clear container and are subject to inspection”.

Chair Hagler stated that when the agency makes changes to any AR's, the agency sends those changes out to the employees so the employees have been properly advised of said changes.

Chair Hagler also stated the EMC does not have jurisdiction nor can the EMC provide the proposed resolution as the EMC cannot change and AR.

Member Deleon moved to deny grievance #4908 because the EMC does not have the jurisdiction to change an AR or order an agency to do so, which is the resolution requested by the grievant.

Chair Hagler requested a second.

Member Puglisi suggested citing NRS 284.020 (2) for additional clarification.

Member Deleon adopted Member Puglisi's change to the motion.

Member Puglisi seconded the motion and the motion passed unanimously.

MOTION: Moved to deny grievance #4908 per NRS 284.020 (2).
BY: Member Donya Deleon
SECOND: Member Guy Puglisi
VOTE: The vote was unanimous in favor of the motion.

13. Discussion and possible action related to Grievance #4921 of Aaron Dicus, Department of Corrections – Action Item

Chair Hagler opened the committee for discussion.

Chair Hagler stated there was no clear issue as to how the employee was grieved other than the agency wasn't running their department consistently.

Member Puglisi stated the agency and supervisors were not consistent about applying their regulation, but was unsure how that impacted the grievant.

Member Russell stated on page two of four, on the grievant comments above step one response to attachment, that the grievant has only seen his name one time, however, the grievant is mandated multiple times but is not on the list.

Chair Hagler stated the roster was attached on the grievance but was not included in the committee packets.

Chair Hagler opened the committee for discussion stating there is a lot of information and the EMC is to determine if the grievance should be denied due to lack of jurisdiction or previous decisions.

Member Puglisi stated the only prior decision he could find were not exactly the same scenario. Member Puglisi stated in that decision, the agency was exhausting the list (duty roster) every forty five days, or the agency was restarting the list even if it hadn't been exhausted.

Chair Hagler stated she did recall that hearing and while slightly similar, it was not the same, but in the case of grievance #4921, the employee is stating the agency is not following their AR's or Operating Procedures (OP's).

Member Puglisi stated to have a better understanding of this grievance, the committee may have to hear it all. Member Puglisi stated there is a lot of back and forth in the responses but there is no real background in the grievance. The grievance mentions the list (duty roster) and AR 221 and then stated the list (duty roster) were made by hire date only, and completely ignored seniority.

Member Puglisi stated he thought hire date was how seniority was based. Member Deleon stated that it is possible, once you become a certain class of officer, that classification may change the seniority.

Member Russell stated the EMC would need to set this grievance as a hearing to get the facts that apply specifically to this situation.

Member Russel stated depending on the facts, the EMC may not be able to grant the requested resolution but needed to have a better understanding of this grievance in order to make that decision.

MOTION: Moved to set grievance #4921 for hearing at a later date.

BY: Member Turessa Russell

SECOND: Member Guy Puglisi

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

14. Public Comment

There were no comments from the audience or Committee Members.

15. Adjournment

Chair Hagler adjourned the meeting at approximately 10:30 am.