



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 27, 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	
Ms. Sandie Ruybalid	X
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	
Employee Representatives	
Ms. Donya Deleon	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X

Staff Present:

Mr. Robert Whitney, 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**

There were no comments from the audience or Committee Members.

3. Adoption of the Agenda – Action Item

Chair Hagler requested a motion to adopt the agenda and strike prior meeting minutes approval.

MOTION: Moved to approve the Agenda.

BY: Member Sherri Thompson

SECOND: Member Sandie Ruybalid

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

4. Adjustment of Grievance of Gregory Barlow (paper), College of Southern Nevada – Action Item

This matter was heard before the Employee-Management Committee (“EMC”)¹ on April 27, 2017, pursuant to NAC 284.695 and NAC 284.6955, regarding a grievance filed by Gregory Barlow (“Mr. Barlow” or “Grievant”). Mr. Barlow was present and represented by Jeannie Lake, Esq. (“Ms. Lake”). The College of Southern Nevada (“CSN”) was represented by Senior Assistant Vice President of Facilities Sherri Payne and Chief Human Resources Officer Joseph Scarborough.

Both parties submitted exhibits, and there were no objections to the exhibits. Mr. Barlow, CSN Project Manager Allen Berndsen (“Mr. Berndsen”) and Plumber III Daniel Brown (“Mr. Brown”) were sworn in and testified at the hearing.

Mr. Barlow, through Ms. Lake, indicated in substance that he was there because of a grievance he had filed in August of 2016 concerning a documented oral warning which he received July 8, 2016, and which he believed was unfair. This was because much of the oral warning was based on Mr. Barlow’s alleged refusal to follow instructions, alleged unprofessional behaviors, and alleged ongoing disregard for procedures in the CSN facilities management department. Additionally, Ms. Lake noted, the instructions in question had been sent to all staff, and not specifically to Mr. Barlow. Mr. Barlow felt that he had been treated with disrespect, that there was a lack of professionalism displayed towards him on a number of occasions by his supervisors, and that he had been set up to fail by his supervisors.

Mr. Barlow stated in substance that his employers argued that none of the directives or comments in their e-mails rose to the level of being demeaning, condescending or disrespectful towards him, but that the e-mails from his supervisors were in fact disrespectful and demeaning. Mr. Barlow argued in substance that he disagreed with the way he had been treated by his supervisor, and that he felt frustrated and humiliated at the hands of his supervisors. Mr. Barlow added that the employer alleged that the documented oral warning did not address his failure to complete the Mesquite job assignment, but instead

¹ The EMC members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt), who chaired the meeting; Co-Vice Chair Sandie Ruybalid (DHHS), Sherri Thompson (DETR) and Turessa Russell (UNLV). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, was also present.

addressed the tone of Mr. Barlow's emails; however, Mr. Barlow argued, the entire tone of the documented oral warning was based on the e-mail exchanges which concerned what had occurred at the Mesquite campus. It was Mr. Barlow's hope that he could show that the events which led to the documented oral warning were not accurately reflected. Mr. Barlow also stated in substance that he felt that the unprofessional behavior shown in his supervisors' e-mails had been repeatedly ignored when he reported them.

CSN indicated in substance that it gave Mr. Barlow a documented oral warning because he did not follow several procedures, such as clocking in and clocking out, which Mr. Barlow admitted in his response that he did not follow. CSN felt as though Mr. Barlow had been given ample instruction on what he needs to do when he arrived at and left a campus, and that this had been delineated in department procedures, letters of instruction ("LOI") and at meetings. CSN was also concerned that Mr. Barlow was not following the directives he was given, such as responding to e-mails. CSN added in substance that they would beg to differ that an LOI given to the entire department did not carry the same weight as an LOI only given to an individual, and that instructions given to a group of people were just as relevant as instructions given to an individual. CSN added that they had given Mr. Barlow individual instruction on procedures in meetings which they had with him.

With respect to professionalism, CSN felt Mr. Barlow's e-mails had an insubordinate tone, and that this tone came from the belief that his supervisors were harassing him when they questioned his work performance. CSN stated in substance that they were questioning Mr. Barlow's work because they had concerns about his work and that it was the supervisor's responsibility to make an employee aware of when they were not meeting the employer's expectations. CSN added in substance that if an employee had questions for his supervisor then the questions needed to be asked in a professional way, but they had not seen that in Mr. Barlow's e-mails. CSN also stated in substance that the documented oral warning did not address anything about the work not being completed at Mesquite or the late arrival there, and that was just the incident that led to some of the other items involved in the documented oral warning.

CSN pointed out in substance that the use of the documented oral warning was within the guidelines of the prohibitions and penalties for a first offense, and that the first offense went from a documented oral warning to a suspension, and that CSN chose to do a documented oral warning, which was the minimum discipline, in order to help Mr. Barlow learn what their expectations were. CSN also argued that its actions were neither arbitrary nor capricious, and that it consulted with Human Resources to make sure that it had all of its documents in line, and that what they were doing was appropriate, and that they had imposed similar discipline for other employees for similar offenses. CSN also stated in substance that this was indicative of an ongoing problem that they had had with Mr. Barlow, trying to get him to follow instructions and directions, and that it had regular meetings with Mr. Barlow to try and help him improve his performance. CSN also stated in substance that it had given Mr. Barlow LOIs and direction in his evaluations, so CSN felt that it had provided ample instruction to Mr. Barlow.

Based on all it had done, CSN argued in substance, CSN did not feel that it was appropriate to rescind the documented oral warning, and that its issuance was within the guidelines of its prohibitions and penalties, and that Mr. Barlow had received ample instruction prior to the discipline being imposed.

Mr. Barlow testified in substance that he had worked at CSN for twenty eight years. In answering questions about the documented oral warning concerning the e-mails to his supervisor, specifically one from June 24, 2016, at 7:33 am to Mr. Berndsen, Mr. Barlow explained that the e-mail was sent because he was reaching out to his supervisor and manager to let them know that there was still work to be done at the Mesquite CSN campus. Mr. Barlow testified in substance that the work he and his colleague had come to perform had been completed, but that upon leaving the campus the site administrator at Mesquite informed them of other work that needed to be done. Mr. Barlow stated in substance that he and his colleague did not have time to do this work, and that he wanted to make his supervisor aware of this fact. Mr. Barlow explained in substance that when he arrived at Mesquite he and his colleague started their assigned tasks, and that upon completion the site administrator brought to his attention other issues that they did not have time to complete that day so that someone would need to come back at a later date.

Mr. Barlow explained in substance that he took Mr. Berndsen's e-mail sent after his notification e-mail as a "bit offensive," and that he was just trying to let Mr. Berndsen know what was going on at the Mesquite campus, and that for him to come back with that kind of e-mail he found offensive, so he came back in an offensive manner. Mr. Barlow stated in substance that no one had discussed the specifics of Mesquite trip with him prior to these e-mails being sent.

Mr. Barlow also stated in substance, with respect to clocking in and out referenced in the oral warning, that in waiting for his ride to Mesquite to arrive he was waiting outside in the parking lot, and that when the van to take him to Mesquite arrived he jumped in and left. Mr. Barlow also testified in substance that he was not made aware that they had a specific time of 7:00 a.m. to leave for Mesquite that day. Mr. Barlow further explained in substance that there was no clock at the Mesquite campus to clock in and out with.

Mr. Barlow explained in substance that with respect to him not placing the keys for the Mesquite campus in the designated slot, he always turned in his keys at the end of his shift, and that it was not accurate that he had failed to return the Mesquite keys as required.

Mr. Barlow also pointed out in substance that there was an e-mail from a co-worker named Rudy Dow to Mr. Berndsen dated June 27, 2016, which pointed out why the leave time for Mesquite on June 24th was untimely, and explained what had happened when he and Mr. Barlow arrived at the Mesquite campus. Mr. Barlow stated in substance that after this e-mail was received no one in substance apologized to him or admitted that they were wrong for assuming that he was at fault. Mr. Barlow stated that he had asked for an apology but had not received one.

Mr. Barlow testified in substance that he attached the e-mails to his grievance so that he could demonstrate how he had been “talked down to” on a regular basis. Mr. Barlow further testified that when he received the documented oral warning he responded to the documented oral warning, and that no one at that time had talked to him about the documented oral warning. Mr. Barlow also addressed the LOIs that had been attached to his documented oral warning as substantiating documentation. Mr. Barlow testified in substance that he thought that the LOIs given at that time were just given in general to everyone, and that when he got into the current situation, CSN treated it as a second offense for him.

Mr. Barlow also testified in substance that in the July 8, 2016 documented oral warning his supervisor mentioned a March 1, 2016 LOI as being the reason for the documented oral warning being given, and that Mr. Barlow had specifically not acknowledged a “read receipt” received from his supervisor on June 21, 2016. Mr. Barlow explained that he did not acknowledge the read receipt because he did not know what it was, so he pushed the no button. When he did this, according to Mr. Barlow, it was taken that he was not responding. Mr. Barlow testified in substance that after he had pushed the no button he was made aware that he should have pushed the yes button.

Mr. Barlow also stated in substance that he has weekly meetings with his supervisors where they tell him about all the mistakes he has made, and that he asks them to explain the mistakes. Mr. Barlow also testified in substance that he has accused his supervisors of micromanaging him, but that the entire issue of micromanagement arose because he was asked if he felt that he was being micromanaged by Mr. Bernsden.

Mr. Barlow also addressed the last paragraph in the documented oral warning, which stated in substance that he had a continuing disregard for procedures. Mr. Barlow in substance denied that he disregarded procedures and directives, and that the failure to clock in and out for the Mesquite trip was not intentional, but was a mistake. Mr. Barlow also explained in substance that he was no longer a Plumber III, and was now a Plumber I, because his manager felt that he was not performing his duties well enough, fast enough, and that he felt if he was that much of a hindrance he “would get out of the way,” and so he stepped down. Mr. Barlow stated in substance that this behavior towards him went on for several years, had not gotten any better, and that once he stepped down his situation became worse. Mr. Barlow testified in substance that he has complained about this treatment to Sherri (Payne) and John Scarborough, but that he had received no real response. Mr. Barlow also testified in substance that there had been times when he had asked for training but that the training had been denied.

Mr. Barlow testified in substance that Mr. Bernsden had no concern in getting him upset, and that Mr. Bernsden had made comments about him to Ms. Payne that were untrue, and that he had brought this to her attention, but that she believed what Mr. Bernsden had told her was true. Mr. Barlow stated in substance that he did not believe he was uncooperative or showed a general

pattern of being disrespectful towards his supervisors, and that he believed that supervisors should be respectful and professional when they communicated with their employees. Mr. Barlow added that he felt he should be respectful in his interactions with his supervisors. Mr. Barlow also stated in substance that he believed that he was the only employee who was required to meet bi-weekly with his supervisors.

With respect to being referred to the Office of Constitutional Equity, Mr. Barlow testified in substance that he did not follow through with going to that office because he did not understand what it meant and why he had been referred to that Office. Mr. Barlow stated that he did not reach out and ask his supervisors what the referral to the Office of Constitutional Equity was for.

Mr. Barlow stated in substance that he did not frequently violate the clock in and clock out procedures at CSN, and again stated that there was no clock at the Mesquite campus.

Mr. Bernsden testified that Mr. Barlow had not completed the work order given to him for the Mesquite campus work. Mr. Bernsden testified in substance that employees are given a half hour to do their work orders and review their emails before they are to start their daily shift, and that this was in CSN's standard operating procedures. Mr. Bernsden stated in substance that Mr. Barlow was not disciplined for not leaving for the Mesquite campus on time, or for not completing his work order for the Mesquite work. Mr. Bernsden also stated in substance that there was a standard operating procedure for returning the Mesquite campus keys, and a way to in substance clock in and out at the Mesquite campus. Mr. Bernsden testified in substance that, with respect to the Mesquite trip, Mr. Barlow should have clocked out when he went to the parking lot to wait for the van.

With respect to the meetings with Mr. Barlow, Mr. Bernsden testified in substance that he let Mr. Barlow know when he was doing something better, but that he also let him know when he was not meeting expectation, and that he asked Mr. Barlow if he had any questions during the meetings. Mr. Bernsden also testified in substance that Mr. Barlow seemed to frequently forget the instructions which he was given. Mr. Bernsden also states in substance that Mr. Barlow had been offered training in the past, and that he had given Mr. Barlow training on procedure in the past, and that he probably provided more training to Mr. Barlow on procedure than he had to any other employee.

With respect to the meetings with Mr. Barlow, Mr. Bernsden stated in substance that Mr. Barlow would tell him he understood what he was to do, but then went out and did something different, and at times has argued at the bi-weekly meetings.

In response to questioning, Mr. Bernsden testified in substance that he did not feel he was making broad allegations without first finding out appropriate facts because Mr. Barlow had been informed of the trip to Mesquite several days before he went to Mesquite, and that he was expected to be prepared when he went to the Mesquite campus.

With respect to the read receipt, Mr. Bernsden stated in substance that Mr. Barlow's explanation did not satisfy him because Mr. Barlow had received read receipt e-mails before the time he failed to acknowledge the read receipt. Mr. Bernsden also testified in substance that there was an expectation that Mr. Barlow was to be on the computer the morning of the June 23, 2016, prior to leaving for the Mesquite campus to answer his e-mails.

Mr. Brown testified in substance that Mr. Barlow had not completed his assigned work orders when he went to the Mesquite campus, and that he should theoretically have been able to do so, considering what he had told Mr. Barlow he would need two to three days before the trip. Mr. Brown also testified that Mr. Barlow never told him of any issues with not completing his work assignments at the Mesquite campus. Mr. Brown also stated in substance that he did not have any discussion with Mr. Barlow after he returned from Mesquite because the issues were already being addressed, and so he stayed out of the e-mail discussions.

The EMC discussed and deliberated on Mr. Barlow's grievance. Member Thompson stated in substance that she found it troubling that the training, the LOI and the bi-weekly meetings look good on paper, but that the effects did not appear in the employment relationship between the parties. Member Thompson added that she thought the e-mails were unprofessional on both sides. Member Thompson also stated in substance that she thought that the documented oral warning was a little heavy handed because the LOI previously given and cited in the warning was not specific to Mr. Barlow. Member Russell stated in substance that she agree with Member Thompson.

Member Ruybalid stated in substance that she disagreed that the documented oral warning was a little heavy handed, and that it was the lowest form of discipline that could be imposed, but that she had concerns with some of the language in the documented oral warning, because the warning read as though the LOI had been specific to Mr. Barlow, and that it would be better to state that the "Department received a letter of instruction" for purposes of clarity. Chair Hagler stated in substance that LOIs are typically meant to be a coaching tool for individual employees, but was not sure if it was stated anywhere that LOIs had to be specifically for one employee, but that she would make the recommendation that CSN not use a broad LOI to issue to a whole department, but that the same result could be achieved by issuing a memo. Chair Hagler also stated in substance that she did not believe that the documented oral warning was heavy handed, although there was disrespect shown by both sides.

Member Thompson made a motion that the documented oral warning be removed from Mr. Barlow's file, since it was not substantiated that the issues it referenced had been shown to be an ongoing problem. The motion failed, as the motion failed to gain a majority of votes. Based on the above and foregoing, the documented oral warning will remain in Mr. Barlow's file, and the grievance is hereby denied.²

²Member Thompson's motion was seconded by Turessa Russell.

MOTION: Moved to remove documented oral warning from Mr. Barlow's file.
BY: Member Sherri Thompson
SECOND: Member Turessa Russell
VOTE: The vote was two opposed (Chair Hagler and Co-Vice Chair Ruybalid) and two for (Member Thompson and Member Russell).

5. Adjustment of Grievance of Ronald Burke # 4592 and #4268 et al., Department of Transportation – Action Item

This matter was heard before the Employee-Management Committee (“EMC”)³ on April 27, 2017, pursuant to NAC 284.695 and NAC 284.6955, regarding grievances filed by Ronald Burke (“Mr. Burke” or “Grievant”). Mr. Burke represented himself. The State of Nevada, Department of Transportation (“NDOT”) was represented by Allison Wall (“Ms. Wall”) in its motion to dismiss, and Darrin Tedford (“Mr. Tedford”) in the hearing for Grievance #4268, et al.

NDOT brought a motion to dismiss Grievance # 4592 at the outset of the proceedings, which concerned an evaluation of Mr. Burke. Ms. Wall stated in substance that the employee was grieving an annual performance evaluation in which he was rated meets or exceeds standards on all of the job elements, with an overall rating of meets standards, and that there were no negative or derogatory comments in the evaluation that could adversely affect Mr. Burke. Therefore, Ms. Wall argued in substance, there was no injustice, so there was nothing for the EMC to adjust, and that the EMC did not have the authority to direct an employer to issue an exceeds standards evaluation, and that Decision # 18-10, Alyson Jungen from 2010 supported her argument.

Mr. Burke responded in substance that pursuant to NAC 284.078, NRS 284.065, NRS 284.155, NRS 284.340 and NRS 284.384, permanent employees could appeal contested performance evaluations, and that he was doing so. Mr. Burke further argued that any dismissal of his grievance would deny his rights to appeal a contested work performance evaluation, and that the rating itself in the evaluation wasn't germane to his grievance in #4592, and that the grievance should be allowed to proceed on its merits.

The EMC voted unanimously (Motion was made by Member Ruybalid and seconded by Sherri Thompson) to grant NDOT's motion to dismiss Grievance # 4592 because none of the elements in Mr. Burke's evaluation were below meets standards, so Mr. Burke was not grieved, and that there was a previous decision, # 18-10, Alyson Jungen, saying in substance that the EMC had no authority to direct an employer to issue an exceeds standards evaluation.

³ The EMC members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Risk Mgmt), who chaired the meeting; Co-Vice Chair Sandie Ruybalid (DHHS), Sherri Thompson (DETR) and Turessa Russell (UNLV). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, was also present.

With respect to Grievance #4268, et al., witnesses Changlin “Charlie” Pan (“Mr. Pan”) and Mr. Burke were sworn in, and there were no objections by either party to the exhibits submitted.

Mr. Burke stated in substance that the evidence would show that Mr. Tedford, Chief Engineer at NDOT, violated NAC 284.468, NRS 284.065, NRS 284.155 and NRS 284.335 by preventing him, a Senior Chemist V, the opportunity to interact with Michelle Maher (“Ms. Maher”), his immediate supervisor. Mr. Burke added that Mr. Tedford and NDOT further violated the previously referenced NRS’ by preventing him from performing his duties and responsibilities to supervise Douglas Yezek, (“Mr. Yezek”) a Chemist III. Mr. Burkes added in substance that NDOT management failed to resolve the issues, and that the only way he could resolve the issues in his grievance was to bring them before the EMC.

Mr. Burke testified in substance that Grievance# 4268 Series A involved his immediate supervisor, Ms. Maher, and were Grievance #'s 4268, 4277 and 4278. Mr. Burkes stated in substance that Grievances #s 4269, 4282 and 4283 (Series B) were the result of interference by Mr. Tedford into the relationship between Mr. Burke and Mr. Yezek. Mr. Burke indicated in substance that Mr. Yezek and he were in the process of revising Mr. Yezek’s work performance standards. Mr. Burke stated in substance that the combining of these grievances by Mr. Tedford, NDOT management, and to a limited extent State Personnel, compromised the uniqueness and lessened the impact of these grievances on the overall work environment, and the uniqueness resulted from divergent histories of the grievances.

Mr. Burke also testified in substance that the evidence would show that the grievances were not the result of the revised work performance standards, dated January 28, 2016, and filed on February 1, 2016 with NDOT’s Human Resources Division. Rather, Mr. Burke stated, the revised work performances standards were evidence of unfavorable work environment and conditions created by Mr. Tedford, and that Mr. Tedford’s micromanagement techniques hampered the supervisor-subordinate relationship between Ms. Maher and Mr. Yezek and Mr. Burke.

NDOT stated in substance that the Materials Division of NDOT consisted of eighty employees in Reno, Carson City and Las Vegas. Mr. Tedford noted in substance that Mr. Burke and Mr. Yezek were two employees in the NDOT chemical lab in Carson City.

NDOT argued in substance that the grievances in question were about the revision of work performance standards for Mr. Burke and Mr. Yezek. NDOT noted that the revisions were necessary to expedite completion of sample testing and to clarify expectations of the positions in question. NDOT stated that it revised the work performance standards for Mr. Burke’s and Mr. Yezek’s positions in conformance with applicable NDOT policies and NAC 284.468, and that the employees themselves were involved in the revision process.

NDOT stated that Mr. Burke had proposed seven resolutions to his grievances, and that the first two proposed resolutions described removing the current work performance standards and using the previous work performance standard, but that this would not help expedite sample testing or clarify work performance expectations. NDOT noted in substance that resolution three proposed micromanaging techniques should be discontinued. NDOT stated in substance that the management of the chemical labs was a combined effort between several individuals, and involved setting smart goals. NDOT mentioned that resolution four, the development of new work performance standards by Mr. Burke and his supervisor, would eventually require approval of the appointing authority, which would be Mr. Tedford, which would result in nearly identical work performance standards to those already established.

With respect to resolution five, NDOT stated in substance that the approach suggested in the resolution had been part of NDOT's communication process which resulted in the revised work performance standards. With respect to resolution six, which proposed allowing Ms. Maher to supervise the chemical laboratory, NDOT stated in substance that this proposal had been in the process of implementation since Mr. Burke's current supervisor had been assigned the job in 2014. However, NDOT noted in substance that this process had not been immediate. With respect to resolution seven, which proposed including the Director of Human Resources Management, and the NDOT EEO Officer in the resolution process, NDOT stated in substance that the appropriate personnel had reviewed and investigated the grievance. Mr. Tedford also stated in substance that it was NDOT'S position that neither the grievance nor its proposed resolutions were warranted, and that Mr. Burke's grievances should be denied.

Mr. Burke testified in substance that Grievance 4268 et al, were a series of grievances which were related to the supervisor-subordinate relationship, but one was a non-existent supervisor-subordinate relationship (series A). Series B, according to Mr. Burke, involved his sixteen year relationship with Mr. Yezek. Mr. Burke stated in substance that the problem he had with both grievances was that the combining of the grievances negated the impact of the grievances because their histories were different. With respect to Series A, Mr. Burke testified in substance that the grievances went through the "normal channels" of command. However, Mr. Burke stated in substance that with respect to Series B, other people came into the grievances, and that when it reached step two Rob Easton ("Mr. Easton") of NDOT Personnel Department commented and proposed a dismissal of Mr. Burke's grievance, even though he was following all of the procedure in the NEATS system. Mr. Burke added in substance that this request by Mr. Easton was the result of trying to combine two grievances that were technically related based on the relationships in the grievances.

Mr. Burke stated in substance that he was in the process, with Mr. Yezek, of revising Mr. Yezek's work performance standards, and that as Mr. Yezek's supervisor he felt that he should be allowed to continue to do that. However, Mr. Burke said in substance that what had happened was that he was being dictated to, and that the revised work performance standards never really had his input, which was why he did not sign his or his subordinates work performance standards.

Mr. Burke testified in substance that he had issues with the sample turn-around time, and that he was not made aware of the complaints about turn-around time of sample testing. Mr. Burke also testified in substance that he had problems with the field organization not submitting materials in a timely manner, and that he had brought this to the attention of NDOT management. Mr. Burke stated in substance that part of the problem with sampling turn-around time involved when samples were submitted from construction projects on a transmittal, because an incorrect transmittal form would delay sampling.

In addressing Mr. Tedford's comment at step one, Mr. Burke said in substance that there were complaints from the field organization, which at that time Mr. Burke was unaware of, but what had happened was that many times he had covered for the field organization and logged in samples with incomplete transmittal information. Mr. Burke also testified in substance that he no longer did this.

Mr. Burke also stated in substance that although Mr. Tedford said that he (Mr. Burke) had input concerning the work performance standards he was not totally involved in that situation. Mr. Burke added in substance that he thought what should have happened was that ideas should have went upward through the chain of command and not been dictated by the chain of command, and that sometimes management was worse in communicating to him information related to sampling than the field division at NDOT was. Mr. Burke also stated in substance that he wanted to see some kind of order in doing things, and that with the new work performance standards his work performance was dependent on how well someone else did their job, and that this should not be the case.

Mr. Burke testified in substance that turn-around times originated in 2002, and before that time they did "time motion," and that he realized that before you could even do turn-around time one needed to find out how long it took to test a sample. The only way to do that, Mr. Burke testified in substance, was to time how long it took to complete the sample. Additionally, Mr. Burke testified in substance that as Mr. Tedford reduced the testing times the amount of samples arriving at the lab was the same, but there was a 10-13% reduction in turn-around time for the samples, and that the reduction did not account for extraordinary events and conditions. Mr. Burke also testified in substance that the reduction was causing undue hardship on him.

In response to questioning, Mr. Burke indicated in substance that by Mr. Tedford micromanaging he prevented the supervisor subordinate relationship with Ms. Maher and Mr. Yezek, and that this resulted in dysfunction, and that communication suffered as a result. Mr. Burke also testified in substance that he was revising Mr. Yezek's work performance standards because there were changes in Mr. Yezek's duties brought on by one of Mr. Tedford's predecessors, and that in any event work performance standard should be looked at (theoretically) annually.

Mr. Burke acknowledged in substance that he was given work performance standards to review, and that he responded with a memo containing his

comments, but that he was not involved in the actual generation of the standards, and that the standards for both he and Mr. Yezek were dictated to him. Mr. Burke added in substance that this dictation did not allow supervisors to supervise with little interference from the appointing authority. Mr. Burke also stated in substance that a resolution was reached on turn-around time, and that if samples arrived with incomplete transmittal data they would not be logged in to start the “clock” on him with respect to turn around time for sampling, and that a procedure was set up for collecting the needed data, but he indicated in substance that this process was slow, and that the new process would not stop complaints about sampling time.

Mr. Tedford stated in substance that the chemical lab getting samples out in a timely manner was important so that NDOT contractors could be paid and do other work for them. With respect to historic turn-around times in the chemical lab and complaints, Mr. Tedford indicated in substance that this was not really the issue, and that one of his goals upon becoming Mr. Burke’s supervisor was to reduce sampling turn-around time. Mr. Tedford stated in substance that one of the first things he did in 2012 was to sit down with Mr. Burke and Yezek and discuss turn-around times and re-establish what new turn-around times would be, that they all participated in the establishment of the new turn-around times, and that the new turn-around times were realistic. However, Mr. Tedford testified in substance that it became apparent over time that just establishing turn-around times would not be enough to achieve the turn-around time, and that work performance standards and job elements would also need to be adjusted. Mr. Tedford indicated in substance that he had a meeting with NDOT Human Resources Department with respect to how to revise the work performance standards, and that he was especially concerned about certain job elements relating to turn around time, and the rating for those job elements.

Mr. Tedford said in substance that the changes in job elements and work performance standards were given to Mr. Burke for comment, and that Mr. Burke did so, and that Mr. Tedford responded back to Mr. Burke and addressed his concerns in the best way he could. However, Mr. Tedford stated in substance that after considering Mr. Burke’s concerns he did not feel the need to revise the draft of the work performance standards he had present to Mr. Burke. Mr. Tedford testified in substance that he felt NDOT followed the applicable law in this situation. Mr. Tedford also testified in substance that testing delays as a result of equipment breakage, unforeseen sick leave and bad transmittals were tracked and would not be held against Mr. Yezek or Mr. Burke.

The EMC discussed and deliberated on Mr. Burke’s grievances. Member Russell stated in substance that she was unsure if at this point in time there was anything that the EMC could do, and that from Mr. Burke’s perspective there was something missing in the interaction between he and his supervisor, but that the EMC could not really gain insight into the matter without Ms. Maher being present and seeing the interaction between Mr. Burke and Ms. Maher. Member Thompson in substance said that she agreed with Member Russell, but that she felt that NDOT had shown that they were trying to work with Mr. Burke. Chair Hagler stated in substance that she had seen where steps had been taken by NDOT to facilitate what Mr. Burke maybe sees as a hindrance to his being a

supervisor. Chair Hagler also noted in substance that the basis of the grievances was that Mr. Burke felt that NDOT violated NAC 284.468 by not having his supervisor revise the work performance standards, but that NAC 284.468 specifically said the appointing authority had final approval of the standards. Chair Hagler further stated substance that she felt that NDOT did everything that it could interaction-wise with Mr. Burke in revising the work performance standards, but did not know if they came to an understanding, and that NDOT showed they did a fair analysis on revising the work performance standards and had made a sound decision in getting with their labs to do so. Chair Hagler added in substance that she was not sure if it was proven that NAC 284.468 had been violated.

A motion was made to deny Grievances 4268 et al, because the Grievant had failed to establish that NDOT had violated NAC 284.468. Based on the above and foregoing, the grievance is hereby denied.⁴

MOTION: Moved to deny grievance.
BY: Member Sherri Thompson
SECOND: Member Sandie Ruybalid
VOTE: The vote was unanimous in favor of the motion.

6. Public Comment

7.

There were no comments from the audience or Committee Members.

8. Adjournment

Chair Hagler adjourned the meeting at approximately 12:30 pm.

⁴Sherri Thompson's motion was seconded by Sandie Ruybalid and carried by a unanimous vote.