



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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**Meeting Minutes of the Employee-Management Committee
Date: May 12, 2022**

Held at the Nevada State Library and Archives Building, 100 N. Stewart St., Conference Room 110, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada, via videoconference.

Committee Members

Ms. Stephanie Parker	X
Mr. Sandie Geyer	X
Ms. Sonja Whitten	X
Ms. MaryJo Scott	X

Staff Present:

Mr. Todd Weiss, EMC Counsel, Deputy Attorney General
Ms. Lisa Evans, Deputy Attorney General
Ms. Nora Johnson, Interim EMC Coordinator

1. Call to Order

Chair Parker called the meeting to order.

2. Public Comment

Chair Parker opened the meeting by asking for any public comment for the North or the South.

Gwyn Davies thanked the members of the Council, noting that she has taken up a position with the City of Las Vegas due to higher pay and that her last day with the state will officially be the 31st of May.

There was no additional public comment.

3. **Committee introductions and meeting overview and/or update - For discussion only.**

The Committee members and other meeting attendees introduced themselves for the record.

4. **Adoption of the Agenda – Action Item**

Sandie Geyer requested a motion to approve the agenda with the consideration of the adjustment to the agenda on item number 7.

MOTION: Moved to approve agenda with the consideration of the adjustment to the agenda on item number 7.

BY: Sandie Geyer

SECOND: Sonja Whitten

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

5. **Adjustment of Grievance of Brandon Marcano #7613, Department of Corrections -- Action Item**

STATEMENT OF THE CASE

The Grievant believes an employee should receive premium holiday pay for days that the employer controls the employee. The Grievant was placed on admin leave on October 29, 2020, and his regular days off were changed.

The Grievant did not receive holiday pay for three days in November, November 1, 26, and 27 in addition to other days the Grievant can identify and can confirm with time sheets.

The Grievant further believed that if the employer wishes not to pay holiday pay that this should be included in the obligation of availability and indicate that this obligation does not apply on a recognized state holiday.

The State indicated the belief that this refers to two separate pay premiums and requested clarification, noting that the understanding was the Grievant was receiving holiday pay under NAC 284.255, which indicates that the employee must be in a paid status the day before and day after a holiday in order to receive the pay. The State noted that NAC 284.256 indicates a different description of qualification for paid holiday premium, indicating that to be eligible for holiday pay, the employee must have worked those days. As such, the State questioned whether administrative leave is considered working time on holidays.

The Grievant confirmed receipt of a letter from the director dated October 28, 2020 noting the days and times the Grievant must be available for the department and confirmed that he was available per those instructions.

The Grievant confirmed that he was not told that on regular state holidays he would be relieved of the obligation of being available. The Grievant further confirmed that he was provided no exception of release to his own personal time on recognized state holidays.

The Grievant confirmed that he was called by the institution and required to report twice during his administrative leave.

The Grievant confirmed that he was paid holiday pay for 10/30/2020 while on administrative leave and on 1/1/2021 while on administrative leave.

The Grievant confirmed that he did not receive 43 total hours of holiday pay for 5/25/2020, 11/11/2020, 11/26/2020, 11/27/2020, 1/18/2021, and 5/31/2021.

The Grievant confirmed that on the dates in question, the Grievant was told to sit home and wait on a call.

The Grievant confirmed that the Grievant was on leave for investigation purposes as well as COVID-19 related leaves and was required to be available by phone.

The Grievant indicated that he was not compensated with PHPRM for any of the leaves.

The State noted that this is referenced by NAC 284.256, which indicates that the employee has to work on the holiday in order to receive the paid holiday premium. The State further indicated that paid holiday premium and paid holiday off are two separate coding events.

The State conceded that it could have, if it so wished, informed the Grievant that the Grievant did not need to be available on a recognized state holiday but did not do so.

The Grievant indicated that the regulation does not mention essential functions and employees are deemed at work to be working even if they are not performing essential functions. The Grievant noted that the regulation does not require or make reference to regular places of work or worksite. The Grievant concluded that the designated times were the State's time and not the Grievant's time and that the state required the Grievant to be available during those times and did not relieve the Grievant of those obligations to be available. As such, the Grievant concluded that he should receive premium pay.

The State concluded that per the above-referenced NAC, being available by phone call does not constitute work and as such, the Grievant is not entitled to holiday premium pay for the days in questions.

Member Geyer asked about the time sheets submitted, noting that they did not include 11/21 and 11/22, Saturday and Sunday, and asked if this is during the period of time that the Grievant was on administrative leave.

The Grievant confirmed that the State had changed his days off prior to the time sheet in question from Thursday and Friday to Saturday and Sunday.

Member Whitten asked for the dates and times the Grievant was called in while on leave.

The Grievant indicated that the Grievant did not have those documented and was uncertain whether it was before or after the dates in question.

Member Whitten asked if the Grievant was required to perform any work duties when called in while on leave.

The Grievant indicated that these calls were to return gear and be informed of the process and procedures.

Member Whitten asked the State to clarify the acronyms used in testimony.

The State explained that the State uses acronyms for coding for pay: PDOH is paid holiday off, Paid Holiday Premium is when an employee actually works on the holiday.

Member Whitten asked if it is possible that the Grievant should have been coded for holiday pay rather than admin pay for the dates in question.

The State indicated the belief that there is not a coding for that.

Member Scott asked if the ADOH code is administrative holiday pay stating that the Grievant was on leave.

The State indicated that it was not and that it stands for Acquired Day Off Holiday, which is acquired compensation time in lieu of overtime at the employee's discretion.

Member Scott asked if the Grievant's days off had been switched at this time.

The State confirmed that they were switched over during the time the Grievant was on administrative leave.

The Grievant reminded the Committee that he received holiday pay for two holidays while on leave prior to those in question.

Member Scott confirmed that the Grievant was paid straight holiday pay but not premium, and thus made whole.

The State confirmed based on the time sheet referenced by the Grievant that the Grievant did receive ADOH in the total of eight hours and also received paid shift differential and use of Admin C1 for COVID-related issues.

Member Whitten asked if the Grievant was ever contacted during a holiday and called in by others usually off on holidays.

The Grievant indicated that the Grievant did not document the days on which the Grievant was called in and therefore, could not give an accurate answer.

Chair Parker noted that the manual indicates that for administrative leave with pay, the employee must be available by telephone to supervise the employee and to report to the work site or other location as directed by the supervisor, thus confirming the Grievant's statement that the Grievant was expected to be available and was in a work status both the day before and the day after the holiday.

The State confirmed that this is the requirement for administrative leave that was indicated on the form served to the Grievant.

The Grievant clarified that for 1/1/2021, the Grievant was on a regular day off and as such, eight hours of regular pay would not be paid on that day, but that the Grievant did receive eight hours of compensatory time on that day on administrative leave.

The Chair indicated her belief that the Grievant is entitled to the holiday pay.

Member Geyer asked about the propriety of asking Counsel for the legal interpretation of the specific NAC with regards to administrative leave versus paid status on admin leave with a holiday falling during that time, specifically noting the question being if it is appropriate for them to be coded as admin leave or as holiday leave pay and then revert back to admin leave following the holiday.

Counsel noted that the coding of these leaves is not a legal question, but one better suited for the Human Resources Department.

DAG Evans asked for confirmation that the Grievant was paid administrative leave for COVID and shift differential pay because the Grievant had been returned to the regular shift.

The State explained that these are two separate types of administrative

leave, with COVID-related issues during which the employee maintains the original shift, the employee would be entitled to any additional pays relative to the hours worked whereas in administrative leave, the paid shift differentials no longer apply because the hours are changed.

Chair Parker asked if there is a policy indicating the differentiation between being on leave for COVID and having the additional pay allowable versus being on administrative leave for investigation.

The State confirmed that this is outlined in the notice served.

The Grievant noted that there was nothing in the notice served indicating the loss of shift differential, which was mentioned in the grievance, as well.

Chair Parker indicated that today's hearing includes only the request regarding holiday pay for 11/26 and 11/27.

DAG Weiss confirmed that this is correct and that the Committee cannot go outside of what is posted in the grievance.

Member Scott indicated that the State has been consistent with the only inconsistency being that when the Grievant was placed on administrative leave, the State did not stipulate that he was relieved of duty on a state-recognized holiday and as such, Member Scott also leans towards granting the grievance.

Member Scott made a motion that the grievance be granted based on the agency's lack of stipulation that the employee is not to be available for work during a state-recognized holiday.

Chair Parker seconded the motion.

FINDINGS OF FACT

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

1. The Grievant was a non-exempt State of Nevada employee.
2. The Grievant is employed by NDOC as a Corrections Officer
3. The Grievant was placed on administrative leave on October 29, 2020
4. The notice provided to grievant concerning his administrative leave stated that he was thereby required to stay home from work but be available for calls or other assignments Monday through Friday from 9am - 12pm and 1pm - 5pm

5. The notice did not contain any exemptions for recognized State holidays
6. Grievant was required to be home and available on three weekday holidays that took place in November 2020, Veteran's Day, Thanksgiving Day and Family Day

CONCLUSIONS OF LAW

1. A grievance is any act, omission, or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee. NRS 284.384(6). "Any Condition" includes a State employee's working conditions.
2. For this grievance, it was the Grievant's burden to establish that he was qualified for premium holiday pay during three weekday recognized State holidays in November 2020, specifically Veteran's Day, Thanksgiving Day and Family Day, while being on paid administrative leave.
3. Grievant was never notified, in writing or otherwise, that he was not required to be available for calls or other work assignments Monday through Friday between the hours of 9am - 12 pm and 1pm - 5pm, as was directed in his notice of administrative leave.
4. As Grievant was indeed not in control of his own time or movement during the periods of Monday through Friday 9am - 12 pm and 1pm - 5pm, including on the aforementioned recognized State holidays, and without any notice to the contrary, he was entitled to premium holiday pay on those dates.

DECISION

Grievance No. 7613 is hereby GRANTED due to NDOC's failure to stipulate that Grievant was not required to be available for work assignments on recognized State holidays.

MOTION: Moved to grant Grievance No. 7613 due to NDOC's failure to stipulate that Grievant was not required to be available for work assignments on recognize State holidays.

BY: Member Scott

SECOND: Chair Parker

VOTE: The vote was in favor of the motion. Member Whitten opposed.

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6. Adjustment of Grievance of James Gaida #7724, Department of Corrections – Action Item

The State noted that it provided administrative leave for the Grievant to attend the hearing and asked if it would be acceptable for the State to rescind this leave.

Chair Parker noted that this is not under the authority of the Committee.

This Grievance was dismissed for failure to appear.

7. Discussion and possible action related to the Grievance #8552 Gina Ringwalt, Department of Business and Industry, Mortgage Division – Action Item

This agenda item was removed from today's agenda.

8. Discussion and possible action related to Grievance #8615 Natalia Wood, Cannabis Compliance Board – Action Item

Chair Parker opened the Committee up for discussion.

An unidentified speaker stated the belief that this Grievance needed to be moved to hearing.

DAG Weiss cautioned the Committee that there is discussion about EEOC reconsideration of religious exemptions, accommodations regarding this grievance and that the Committee does not have the authority to look at any of that.

Member Whitten stated she motioned to move Grievance #8615 for Natalia Wood forward to hearing.

Chair Parker seconded the motion.

MOTION: Moved Grievance #8615 forward to hearing.

BY: Member Whitten

SECOND: Chair Parker

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

9. Public Comment

Gwyn Davies commented that this Committee serves to give advice to those who are underrepresented because all the cards are stacked in favor of the employer, and indicated that what he has witnessed today is a fantastic example of that work. Mr. Davies indicated his belief that people deserve to be heard and that this is the venue in which to hear them and as such, commended the Committee on its work today, noting

that in the past, with previous members no longer seated, this was not always the case. Mr. Davies condemned the requirement of re-education sent via email by Chair Bowsmith. Mr. Davies commended, in no particular order, Denise, Breece, Nora, Ivory, and Joanie on a job well done. Mr. Davies further indicated that Ms. Bowsmith is in charge of the Committee's support staff, but not of the Committee itself. Mr. Davies indicated that it has been an honor to serve as a member on this Committee and to have had the opportunity to do the right thing and to treat people fairly and to defend that NACs. Mr. Davies indicated that he will miss the members of the Committee.

There was no public comment in the South.

10. Adjournment

Chair Parker adjourned the meeting.