



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
May 25, 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	X
Mr. Guy Puglisi	
Ms. Sandie Ruybalid	
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	
Employee Representatives	
Ms. Donya Deleon	X
Mr. Tracy DuPree	
Ms. Turessa Russell	
Ms. Sherri Thompson	X

Staff Present:

Mr. Wayne Howle, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Kara Morris, Hearing Clerk

- 1. Chair Mandy Hagler** called the meeting to order at approximately 9:00 a.m.
- 2. 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.

MOTION: Moved to approve the Agenda.

BY: Member Donya Deleon

SECOND: Member Pauline Beigel

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

4. Discussion and possible action related to Motion to Dismiss Grievance #4406 of Peter Hachikian, Taxicab Authority, Department of Business and Industry – Action Item

On May 25, 2017, this matter came on for hearing and decision by the Employee-Management Committee¹ (EMC) of a motion to dismiss filed by the employing agency.² The Grievant, Mr. Hachikian, was not personally present but appeared at the hearing on this date by and through counsel, Robert H. Domico, Esq. Lori Story, Senior Deputy Attorney General, was present on behalf of the employer-agency, the Nevada Taxicab Authority (NTA).

BACKGROUND

The Grievant, Peter Hachikian, is employed by the Nevada Taxicab Authority (NTA) as a Compliance/Enforcement Investigator 2. In March, 2017, Mr. Hachikian filed two grievances, number 4403, and number 4406, the instant matter.

Grievance 4403 concerned a letter of instruction given to Mr. Hachikian in March 2016. The subject of the letter concerned Mr. Hachikian's interaction with another employee. Because letters of instruction are not considered discipline and consequently are not grievable, Mr. Hachikian and the NTA have resolved Grievance 4403 by agreement, and Mr. Hachikian has withdrawn that grievance.

Mr. Hachikian submitted this grievance, number 4406, on July 3, 2016. In it, he grieves two written reprimands given to him two days earlier, on May 4, one for violating the NTA's email policy, the second for turning in citations later than required. Regarding the first reprimand, the NTA alleges Mr. Hachikian sent an improper agency-wide email about the interaction that he had with the other employee, which served as the basis for the earlier letter of instruction.

The NTA proposes that Grievance 4406 should have been filed on April 21 at the latest, but was actually filed May 4 or 6, 2016.

¹ The Committee members present representing a quorum were: Chair Mandy Hagler, Risk Management Division; Pauline Beigel, Department of Transportation, Donya Deleon, Welfare Division; Sherri Thompson, Department of Employment, Training, and Rehabilitation; Nora Johnson, Division of Human Resource Management. Counsel for the Committee, Chief Deputy Attorney General C. Wayne Howle, was also present.

² The Agency Motion to Dismiss Employee's Grievance was filed on December 13, 2016.

EMPLOYER'S MOTION TO DISMISS

The employer, NTA, has moved to dismiss Grievance 4406 on the basis that it was untimely filed. NTA characterizes Grievance 4406 as one addressed to the letter of instruction given to Mr. Hachikian on March 24, 2016. Since the grievance was filed on May 6, 2016, it would have been well past the twenty-day deadline set by NAC 284.678(1) if NTA's characterization were correct.

The EMC, however, is not convinced that NTA's characterization is correct. Both 4403 and 4406 were filed on the same day, two days after the written reprimands were given. Hachikian argues that Grievance 4403 is directed at the letter of instruction for failure to interact properly with another employee, 4406 was addressed to the written reprimands for violation of email policy and late submission of citations.

Each refers to common facts. Unclear language in Grievance 4406 includes reference to the letter of instruction for improper employee interaction. But Mr. Hachikian explains reference to the letter of instruction is by way of explaining the content of the email, which NTA maintains was inappropriate and was clearly addressed by a separate letter of reprimand. This view is supported by the record because EMC staff had requested withdrawal of 4403 on the basis that letter of instruction is not grievable, with which Hachikian agrees. The matter was resolved in resolution conference and Mr. Hachikian withdrew Grievance 4403.

CONCLUSION AND ORDER

The EMC concluded that Mr. Hachikian's position is the better one. Based upon the foregoing and upon all of the documents and arguments of the parties in this matter, the NTA motion to dismiss was denied because Grievance 4406 related to the written reprimand for violation of email policy and untimely submission of citations, and was therefore timely.³

Grievance 4406 will be set for hearing on the merits at a later date.⁴

MOTION: Moved to deny Motion to Dismiss because grievance is timely.
BY: Member Pauline Beigel
SECOND: Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

³ The EMC's decision denying NTA's motion to dismiss followed upon a motion made by Pauline Beigel, seconded by Sherri Thompson and carried by a majority vote in favor of the motion, with Member Donya Deleon dissenting.

⁴ Mr. Hachikian's proposed resolution, including civil damages for violation of civil rights, is not within the authority of the EMC.

5. Adjustment of Grievance of Christopher Greb, #4493, Department of Public Safety – Action Item

This matter came on for hearing before the Employee-Management Committee⁵ (EMC) on May 25, 2017, pursuant to NAC 284.695 and 284.6955, regarding Grievance No. 4493, Grievant's Exhibit 1 (G1), filed by Christopher Greb (Trooper Greb). Trooper Greb appeared at the hearing on this date together with his counsel, Casey A. Gillham, Esq.

Jackie Muth-Nelson, Deputy Director, Department of Public Safety and Brandon R. Price, Deputy Attorney General, were present on behalf of the employer-agency, the Nevada Department of Public Safety (DPS). Captain Andy McAfee, DPS-Nevada Highway Patrol, and Shauna Bakkedahl, Human Resource Officer at DPS testified as witnesses.

The exhibits submitted to the EMC prior to the hearing were marked and admitted into evidence without objection (*see* Grievant's **Exhibit 1** and DPS's **Exhibits A through I**).

The parties and witnesses were duly sworn.

STATEMENT OF THE CASE

From July 2006 to May 2016, Trooper Greb served as a Sergeant in the Nevada Highway Patrol. In May 2016, he chose to voluntarily demote from Sergeant, pay grade 41, to Trooper (*i.e.* DPS Officer II), pay grade 39. This case follows DPS's denial of Trooper Greb's request to retain his former salary as a Sergeant following his voluntary demotion.

In conjunction with his voluntary demotion, Trooper Greb requested that he retain his wages at the rate he received as a Sergeant. He relied upon NAC 284.173(2) as the basis for his request. That regulation states, in pertinent part, that the appointing authority may decide "to pay an employee at a rate that does not fall within the grade of the class to which he or she is demoted if the appointing authority determines that the demotion is in the best interest of the employee and the State of Nevada." *Id.* Thus it lay within the appointing authority's reasoned discretion whether to grant Trooper Greb's request.

When Trooper Greb's request for a retained rate of pay was denied, he timely filed a grievance on July 28, 2016.⁶ His grievance was denied on July 19, 2016, by Captain James McAfee; and on August 2, 2016, by DPS Deputy Director Jackie Muth-Nelson.

⁵ The Committee members present representing a quorum were: Chair Mandy Hagler, Risk Management Division; Pauline Beigel, Department of Transportation, Donya Deleon, Welfare Division; Sherri Thompson, Department of Employment, Training, and Rehabilitation; Nora Johnson, Division of Human Resource Management. Counsel for the Committee, Chief Deputy Attorney General C. Wayne Howle, was also present.

⁶ DPS moved to dismiss the grievance on October 4, 2016; that motion was denied.

Trooper Greb presents two arguments in his grievance before the EMC: (1) that he was entitled under the law to have received a retained rate of pay following his demotion; and (2) that he was treated differently when compared with other Sergeants who were given a retained rate of pay after demotion.

FINDINGS OF FACT

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

1. Trooper Christopher Greb has been an exemplary State of Nevada employee for twenty-four years.
2. Trooper Greb was a Sergeant in DPS from 2006 until 2016.
3. Trooper Greb voluntarily demoted to a Trooper position in 2016 in order primarily to obtain a more regular work schedule, including having weekends off, conducive to his studies in pursuit of a degree in business management.
4. Following his demotion, Trooper Greb requested he be allowed to retain his rate of pay as a Sergeant pursuant to NAC 284.173. Major James McAfee denied Trooper Greb's request for a pay freeze on July 18, 2016; Deputy Director Jackie Muth denied Trooper Greb's request for a pay freeze on August 2, 2016.
5. The difference in pay, if Greb's request were granted, would exceed \$13,000 over the relevant two-year period.
6. DPS exercised its discretion to deny Trooper Greb's request after duly considering requisite factors listed in NAC 284.173(2), namely the interest of the employee and the interest of the State of Nevada.
7. DPS properly determined that the pay freeze would not be in the best interest of the State of Nevada, based upon resource allocation and public safety needs, and DPS's responsibility as steward of taxpayers' money.
8. Although Trooper Greb suggested at hearing that were he to obtain his business management degree, this might in some manner benefit the State in subsequent employment with DPS, he did not present evidence or testimony demonstrating that this was more than a hypothetical possibility. Trooper Greb therefore did not carry his burden to show any benefit to the State resulting from a pay freeze.
9. DPS properly determined that Trooper Greb's demotion would not benefit the State.
10. DPS also properly weighed negative or adverse consequences which were shown would have followed from granting the request. These include fiscal impact stemming from retention of Trooper Greb's pay level while also needing to fill the vacant Sergeant's position, also at the Sergeant's pay level.
11. Other Sergeants in the past five years have retained Sergeant's pay following demotion to the position of Trooper. However, those cases arose in significantly different circumstances that justified a result different from the one arrived at in Trooper Greb's case. In particular, in one case when pay was frozen due to performance issues, DPS determined that it served

the State of Nevada's interest because it assisted the employer's reasonable efforts to preserve a failing employee. Trooper Greb therefore did not establish he was treated inconsistently or unfairly by the DPS's application of NAC 284.173 in his case.

12. Trooper Greb did not suffer an injustice for which an adjustment is required.
13. If any of the foregoing facts may be more appropriately construed as conclusions of law, they may be so construed.

CONCLUSIONS OF LAW

1. On this grievance, Trooper Greb's burden is to establish that DPS' s denial of his request for a retained rate of pay following voluntary demotion was contrary to law, or that it was arbitrary, capricious, or an abuse of discretion. NRS 233B.135.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. 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).
4. Trooper Greb's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. An employer such as DPS may in its discretion pay a demoting employee at the same rate as previously paid before the demotion, under the authority contained in NAC 284.173(2), when doing so (1) serves the individual's best interest, and (2) serves the State's best interest.
6. Approval of a request for retained rate of pay is not mandatory, and an appointing authority has discretion whether to grant a pay freeze, relying on the criteria established in NAC 284.173(2).
7. DPS's determination that there was no benefit to the State of Nevada, is supported by the evidence, and is not arbitrary or capricious, or an abuse of discretion.
8. DPS's denial of retained rate of pay was consistent with, and not contrary to, NRS 284.173(2).
9. If any of the foregoing conclusions of law are more appropriately construed as findings of fact, they may be so construed.

DECISION

Based upon the evidence in the record and the foregoing findings of fact and conclusions of law, and good cause appearing therefor, Trooper Greb's grievance is DENIED.⁷

MOTION: Moved to deny grievance because unfair treatment was not proven.
BY: Member Pauline Beigel
SECOND: Member Sherri Thompson
VOTE: The vote was unanimous in favor of the motion.

⁷ Member Pauline Beigel's motion to deny the grievance was seconded by Member Sherry Thompson and carried by a unanimous vote in favor of the motion.

6. Discussion and possible action related to Grievance #4971 of Nnika Cromwell, Department of Housing – Action Item

Chair Hagler opened the committee for discussion.

Member Beigel requested clarification as to what resolution grievant was requesting.

Chair Hagler stated it seemed that the grievant was requesting not to do her essential job functions while she was under investigation.

Member Thompson added the grievant may be requesting administrative leave, with pay also. Member Thompson then asked if that was a request the EMC could even consider.

Chair Hagler stated she didn't think this grievance was within the jurisdiction of the EMC, because it involves an investigation that is through a different venue, and even if it was concluded this grievance fell within the jurisdiction of the EMC, the proposed resolution of requiring an agency to provide administrative leave during an investigation, or allow the grievant not to perform her essential job functions during an investigation is not a resolution the EMC could grant. Chair Hagler stated her main concern was this was an active investigation currently in a different venue.

Member Thompson stated that an investigation is only an investigation and doesn't prove any wrongdoing and that if the State had found something, further action would have been taken.

Member Beigel added that if there was more substance to the allegations, the grievant would be on administrative leave.

Member Thompson continued it is the job of the agency to investigate allegations for merit.

Member Beigel added that during investigations, if the alleged behavior is serious, administrative leave and leave with pay can be granted because the agency would not want the behavior to continue during an investigation. Member Beigel noted that the grievant has not been placed on leave at this time.

Chair Hagler stated it seemed the grievant did not want to perform her essential job functions while under investigation and the employer is not being egregious in asking the employee to perform her essential job functions.

Member Beigel stated that if the main issue in the grievance was the employee being asked to hand out her personal cell phone number, if the grievant stated 'no' to that request, did not hand out her cell number and was *not* disciplined, there seems to be no issue. Chair Hagler agreed.

Member Deleon stated the employee was being accused of stealing agency contracts for personal gain.

Chair Hagler stated that may be what the employee is under investigation for, however, there is nothing in the grievance stating that has been determined.

Member Thompson stated if the state has not found anything in relation to those allegations, and the employee is still doing her job, the allegations must not be that serious at this point.

Chair Hagler agreed with that statement and also stated she agreed with Member Beigel that if the alleged actions were that detrimental to the State, the employee would have already been placed on administrative leave.

Member Deleon read the agency response denying the request for administrative leave: "You will not be placed on administrative leave. The Housing Division expects you to continue to perform the duties of your job."

Chair Hagler opened the committee to a motion on whether this can be answered without a hearing or if it falls within the jurisdiction of the EMC.

Member Deleon stated this would not fall under our jurisdiction if it is in another venue. Chair Hagler stated that was correct.

Member Thompson stated based on the grievance FAQ's, working conditions are conditions that arise out of the working relationship between an employer and employee. Therefore the grievance process would be the correct way to address these types of concerns. Member Thompson stated the employee cites working conditions as part of the grievance but did not see anything to support poor working conditions other than the one instance of being asked to hand out her personal cell phone number.

Chair Hagler stated the main narrative of the grievance revolved around the current investigation that is in another venue and that is not within the jurisdiction of the EMC.

Chair Hagler agreed that there is no supporting evidence of adverse working conditions.

Member Thompson made a motion to deny grievance based on NAC 284.695 (1), the EMC lacks jurisdiction.

MOTION: Moved to deny grievance based on lack of jurisdiction, per NAC 284.695 (1).
BY: Member Sherri Thompson
SECOND: Member Donya Deleon
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

Chair Hagler adjourned the meeting at approximately 11:30 am.