



**STATE OF NEVADA**  
**EMPLOYEE-MANAGEMENT COMMITTEE**  
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**Meeting Minutes of the Employee-Management Committee**  
**June 18, 2015**

Held at the Office of the Attorney General, 100 N. Carson St., Mock Courtroom, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 4500, Las Vegas, Nevada, via videoconference.

**Committee Members:**

<b>Management Representatives</b>	<b>Present</b>
Mr. Mark Evans–Chair	
Ms. Mandy Payette–Co-Vice-Chair	
Ms. Bonnie Long	X
Ms. Claudia Stieber	
Ms. Allison Wall	
Ms. Michelle Weyland	X
<b>Employee Representatives</b>	
Ms. Stephanie Canter–Co-Vice-Chair	X
Ms. Donya Deleon	
Mr. Tracy DuPree	
Mr. David Flickinger	
Ms. Turessa Russell	X
Ms. Sherri Thompson	

**Staff Present:**

Mr. Greg Ott, EMC Counsel, Deputy Attorney General  
Mr. Robert Whitney, EMC Counsel, Deputy Attorney General  
Ms. Carrie Lee, EMC Coordinator  
Ms. Jocelyn Zepeda, Hearing Clerk

- 1. Co-Vice-Chair Stephanie Canter:** Called the meeting to order at approximately 9:00 a.m.

**2. Public Comment**

There were no comments from the audience or from the Committee Members.

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

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

**MOTION:** Moved to approve the adoption of the agenda.  
**BY:** Committee Member Turessa Russell  
**SECOND:** Committee Member Michelle Weyland  
**VOTE:** The vote was unanimous in favor of the motion.

**4. Approval of Minutes for February 19, 2015 – Action Item**

Member Weyland noted that in Item 6 on page 2, there was a typographical error of the name “Dupree” and that the correct spelling of the name was “DuPree.”

**MOTION:** Moved to change the spelling of the name “Dupree” to “DuPree” and approve the minutes.  
**BY:** Committee Member Michelle Weyland  
**SECOND:** Committee Member Turessa Russell  
**VOTE:** The vote was unanimous in favor of the motion.

**5. Approval of Minutes for February 26, 2015– Action Item**

Co-Vice-Chair Canter requested a motion to approve the minutes.

**MOTION:** Moved to approve the minutes.  
**BY:** Committee Member Turessa Russell  
**SECOND:** Committee Member Michelle Weyland  
**VOTE:** The vote was unanimous in favor of the motion.

**6. Presentation by the Division of Human Resource Management of proposed amendments to regulations included in the Adjustment of Grievances section of NAC Chapter 284, and request for input and possible recommendation by the Committee.....Possible Action Item**

Michelle Garton (Ms. Garton), Supervisory Personnel Analyst with the Division of Human Resource Management (“DHRM”), presented proposed amendments to several sections of NAC Chapter 284. Two amendments were proposed for NAC 284.658. The first proposed amendment would clarify that the grievance process is available to permanent employees who are in the classified service. The second proposed amendment would provide DHRM with the authority to remove any inappropriately-filed grievance from the grievance process. An agency employer would submit a form to DHRM for review requesting that an inappropriately-filed grievance be withdrawn. Co-Vice-Chair Canter asked if DHRM would remove ineligible grievances. Ms. Garton replied that DHRM Deputy Administrator Shelley Blotter (“Deputy Administrator Blotter”) or a

Supervisory Personnel Analyst would determine the action to be taken after reviewing the form completed by an agency employer. If a grievance was withdrawn, the agency employer would provide detailed information to the grievant. Ms. Garton continued, that if facts on the form were unclear, the grievance would not be withdrawn and proceed as normal through the steps.

Ms. Garton stated the proposed amendment to NAC 284.678 would create consistency throughout the section by using the term “date of the event,” rather than “date of the origin,” to describe when the cause of the grievance occurred.

The first proposed amendment to NAC 284.695 would permit one member of the EMC who has been selected to serve as a representative of management, and one member of the EMC who has been selected as a representative of employees, to determine whether or not a grievance was appropriately filed, or make a decision based upon a previous decision of the Committee. Employees who have filed grievances that are determined to be in the incorrect venue or whose grievance was decided based on a decision previously made by the EMC will be notified by the Clerk to the Committee. Ms. Garton stated that the current EMC Deputy Attorneys General supported this proposed amendment. Committee Member Michelle Weyland asked how the members would be selected and Ms. Garton replied the entire Committee would vote. Deputy Administrator Blotter noted that it was the intent to get a sense if the Committee would want to consider the proposed amendment, or to continue having all motions to dismiss come to the Committee to be heard. Committee Member Weyland stated that the proposed amendment would be helpful. Co-Vice-Chair Canter agreed, and stated that it will move the process along a lot quicker to get resolution. Deputy Administrator Blotter thanked the Members for their input, and reminded everyone that this is just the beginning of the process and that the Legislative Commission would make the final determination if the proposed amendments met the statutory intent of the law. Ms. Garton indicated that the second proposed amendment to NAC 284.695 would change that a hearing on a grievance would be scheduled within 45 days of receipt, not heard by the Committee within 45 days of receipt.

Ms. Garton shared that the proposed amendments to NAC 284.6955 included: shifting the submission of packets from the Chair of the Committee (“Chair”) to the Clerk of the Committee (“Clerk”); increasing the number of sets of packets required to be submitted by both parties from 10 to 12 to reduce the administrative burden on the Clerk; increasing the number of days prior to a scheduled meeting in which packets are due, allowing additional time for the Clerk to process requests for subpoenas when necessary; clarifying the individuals authorized to reschedule a hearing for non-compliance with subsection 2 to either the Chair or a member of the Committee designated by the Chair; and allowing the Chair or a member of the Committee designated by the Chair to determine whether or not an employee who fails to meet the deadline to submit packets for a rescheduled hearing to have the grievance dismissed with prejudice. The final proposed amendment to NAC 284.6955 would create regulations related to the issuance and enforcement of subpoenas requiring attendance at an EMC hearing, as well as for documents deemed to pertain to the grievance pursuant to NRS 284.074, and would clarify that if information

contained in a subpoenaed document is of a confidential nature, the information must be redacted and submitted along with an original document to be reviewed by the EMC if necessary. This proposed amendment specified that a request for a subpoena must be submitted no later than 15 days prior to a scheduled meeting of the EMC.

Ms. Garton spoke regarding the first proposed amendment to NAC 284.6957, which would add language that will allow a grievance to be placed into abeyance, or on hold, when an outside situation such as when an investigation is being conducted, or if a grievant would be away from the office for an extended period of time. The second proposed amendment would change the person to whom a request for a continuance or a request to have a grievance placed into abeyance should be submitted from the Chair to the Clerk. This change makes it clear that requests of the Committee are to be submitted to the Clerk who, in turn, sends the requests to the Chair or a member of the Committee designated by the Chair, depending on who will act as the Chair of the Committee for that grievance. The third proposed amendment, Ms. Garton explained, would allow the Chair or a member of the Committee designated by the Chair to grant continuances or place a grievance into abeyance instead of requiring a decision of the full Committee.

Ms. Garton explained that the proposed amendments to NAC 284.697 would bring it into alignment with amendments proposed to NAC 284.695 and NAC 284.6955. The proposed changes to this regulation would make the resolution of a grievance binding when the resolution is determined by the Chair or a member of the Committee designated by the Chair, the member of the Committee selected to represent management jointly with the member of the Committee selected to represent employees, as well as when it is determined by the Committee.

Committee Member Weyland liked the proposed changes, and stated that it would make the job of the EMC less arduous. Co-Vice-Chair Canter agreed, and there was no further discussion.

**7. Adjustment of Grievance of Paul Burke, #3326, Department of Public Safety – Action Item**

Grievant Paul Burke (“Grievant” or “Mr. Burke”) was present and represented by Julie Cavanaugh-Bill, Esq. (“Ms. Cavanaugh-Bill”). The agency employer Department of Public Safety (“DPS”) was represented by Deputy Attorney General Brandon R. Price. Both parties submitted exhibits, and there were objections to the exhibits. DPS objected and asked that the Office of Professional Responsibility (“OPR”) Report, included as Employee’s Exhibit 3A, be placed under seal, since the document was a confidential personnel record pursuant to DPS Policy 1018.9 and NAC 284.718(1)(j). Ms. Cavanaugh-Bill argued against placing of the OPR report under seal, in substance arguing that doing so would make the grievance process unduly cumbersome. The objection was sustained. DPS also objected to Exhibits 3B, 5, 13, 19, 20, 23, 24 (A and B), 25, 26 and 27. The objections to Exhibits 3B, 13, 19, 20, and 23-26B were sustained and those exhibits were removed from the record.

Mr. Burke, former Department of Emergency Management (“DEM”) Chief Chris Smith (“Mr. Smith”), DPS Homeland Security Administrator Selby Marks (“Mr. Marks”), OPR Investigator Richard Brown (“Investigator Brown”) and Dan Hourihan (“Mr. Hourihan”) were sworn in and testified at the hearing.

DPS argued that this case began on March 19, 2014, when Mr. Burke sent an e-mail to Mr. Smith informing him that he was involved in a personal dispute with an organization which he was a lifetime member of, the National Association of Search and Rescue (NASAR); Mr. Burke was also the State of Nevada, DPS State Representative to NASAR. In his e-mail, Mr. Burke told Mr. Smith that NASAR was contemplating legal action against him and that his lifetime membership was in doubt because of actions Mr. Burke had carried out using his State e-mail address.

Ms. Cavanaugh-Bill stated in substance in Mr. Burke’s March 19, 2014, e-mail that Mr. Burke’s dispute with NASAR began when he disagreed with the nomination of a NASAR board member named Kimberly Kelly (“Ms. Kelly”) and decided to launch an investigation of Ms. Kelly. Ms. Cavanaugh-Bill further stated that Mr. Burke contacted Ms. Kelly via e-mail and notified her that she was the subject of an investigation by him; in that e-mail Mr. Burke used his State e-mail address, and his State signature block was included in the e-mail.

DPS argued that as a result of Mr. Burke’s actions, NASAR threatened to sue him for harassment and to permanently revoke his lifetime membership in the organization. Once Mr. Smith read this e-mail, DPS stated, he became concerned that Mr. Burke may have engaged in inappropriate conduct while at work. These concerns increased after DEM and DPS received on March 28, 2014, public records/Freedom of Information Act (“FOIA”) requests from NASAR representatives concerning Mr. Burke’s conduct. Mr. Smith was charged with responding to the public records request on behalf of DEM and he asked Mr. Burke to assist him.

Mr. Burke then provided Mr. Smith with e-mails that caused him significant concerns about his conduct. These e-mails, DPS argued, showed that Mr. Burke had investigated other NASAR Board members without DPS’ authorization and that such actions were outside of Mr. Burke’s scope of official duties with the Department. DPS also argued that the evidence would show that the e-mails Mr. Burke sent were sent on State time.

Additionally, DPS argued that Mr. Smith had no knowledge of Mr. Burke’s investigation into NASAR and Ms. Kelly’s election until he received Mr. Burke’s March 19, 2014, e-mail and the public records request from NASAR. Once he received those communications, DPS stated that Mr. Smith directed Mr. Burke to have no further contact with NASAR representatives. Furthermore, DPS argued, the decision concerning the termination of Mr. Burke’s lifetime membership in NASAR was initiated by that organization and had nothing to do with Mr. Smith.

DPS stated that Mr. Smith referred the case to the OPR for investigation, OPR's investigation revealed that Mr. Burke had violated DPS policies, and as a result of the investigation Mr. Burke received a Written Reprimand. The reprimand was for violations of DPS policies, including Unbecoming Conduct and Misuse of Information Technology.

DPS argued that Mr. Burke received the minimum discipline for his misconduct, and that he could have received up to a suspension without pay. Additionally, DPS argued in substance that the evidence would show that working conditions at DPS within the relevant time period were normal. Finally, DPS argued that the actions it took against Mr. Burke were reasonable under the circumstances and that Mr. Burke's grievance should be denied.

Ms. Cavanaugh-Bill argued in substance that DPS' actions and written reprimand were inappropriate and unreasonable under the circumstances, and that the reprimand should be removed from Mr. Burke's personnel file. Ms. Cavanaugh-Bill stated that Mr. Smith had conducted himself in a way that showed hostility towards Mr. Burke, and that the e-mail which he had sent to Mr. Smith about what was occurring in NASAR was appropriate.

Furthermore, Ms. Cavanaugh-Bill argued that the FOIA request was not issued by NASAR representatives until after Mr. Smith received Mr. Burke's e-mail, which led Mr. Burke to believe that NASAR was led to write its FOIA request specifically to Mr. Smith, which led to the suspension and later termination of his lifetime membership with NASAR. This behavior by Mr. Smith, Ms. Cavanaugh-Bill in substance argued, was due to Mr. Smith's inability to appropriately manage issues within his agency, an issue which Mr. Burke had raised with Mr. Smith previously. Additionally, Ms. Cavanaugh-Bill argued that Mr. Burke had discussed these concerns with the State of Nevada, Attorney General's Office.

Additionally, Mr. Burke argued in substance that Mr. Smith never sat down with him and discussed the NASAR situation with him, specifically his March 19, 2014, e-mail. Furthermore, Mr. Burke stated in substance that he had been the DPS representative to NASAR for approximately five years and a personal lifetime member of NASAR and that he had regularly corresponded via e-mail with NASAR throughout that entire period of time and that he had never been told it was inappropriate for him to use his State e-mail to correspond with NASAR.

Mr. Burke also argued in substance that it was clear that the OPR investigation failed to identify people who could have shed light upon what was going on with respect to the communications between Mr. Burke and NASAR. Additionally Mr. Burke argued in substance that the training course that he was teaching in Mississippi was not outside employment and that he had taken personal leave to teach the course. Mr. Burke stated that the only form of compensation he received for teaching the course was reimbursement for his own expenditures. Furthermore, Mr. Burke stated that he had previously engaged in teaching and had never been counseled or reprimanded for this activity as a form of outside employment. Additionally, Mr. Burke argued in substance that Mr. Smith's

actions demonstrated the overall working conditions under him and served as an example of his management style, and that the Committee should recommend a work environment study so that the behavior exhibited by Mr. Smith did not occur again.

Mr. Burke testified that he was the planning, training and exercise supervisor for DEM, and that he also performed duties as the State Search and Rescue Coordinator and was the national management system coordinator for the State. Mr. Burke testified that he was the State representative to NASAR, and had been a member since 1984. He further testified that he had been the DEM representative to NASAR for five years. Additionally, Mr. Burke testified that as a member of NASAR he had certain rights which included initiating the recall of a board member. Mr. Burke indicated in substance that at the time these events were occurring he believed he was speaking as the DPS representative of NASAR.

Furthermore, Mr. Burke stated that his intent behind his March 19, 2014, e-mail to Mr. Smith was to make him aware of the circumstances surrounding NASAR's actions and its references to DPS, and that ultimately his goal was to leave Mr. Smith with a determination of whether DPS wanted to terminate its membership with NASAR or not. Additionally, Mr. Burke testified that he did not receive any e-mails or telephone calls in response to his March 19, 2014, e-mail to Mr. Smith, and that he did not recall any real communication between the time of his March 19, 2014, e-mail to Mr. Smith and the initiation of OPRs' investigation. Mr. Burke testified that he had said to OPR investigators that no one at DPS knew about his investigations or inquiries into Ms. Kelly or other NASAR Board members prior to March 19, 2014.

In connection with the OPR investigation, Mr. Burke testified in substance that Deputy Attorney General Samantha Ladich, and Daniel Hourihan were not interviewed. According to Mr. Burke, Mr. Hourihan had been an employee with DEM and also held a position as a contractor for educational services and had been an instructor with DPS. Moreover, Mr. Burke stated in substance that he taught the course that was the subject of the outside employment allegation/violation with Mr. Hourihan. Mr. Burke indicated that the circumstances surrounding his teaching of the course involved the loss of a secondary instructor and at the "last minute" he was asked to assist Mr. Hourihan in teaching the course in Mississippi. Mr. Burke also stated that he requested leave from work in order to teach the course.

Mr. Burke testified in substance that he had previously been to several conferences where he taught courses, and that he thought that there was no problem with him assisting or conducting the course, and that it was well-known within the agency that he was assisting with the course in question. Mr. Burke also testified that no one discussed any concerns with him and that his leave request taken to teach the course in Mississippi was approved without any problems.

In response to questioning, Mr. Burke testified in substance that he had received compensation in the form of payment for airfare, lodging and meals. Mr. Burke

also stated that he could not testify as to what Mr. Smith knew when he approved Mr. Burke's leave request which allowed him to teach the course in Mississippi, and that he did not know if he specifically told Mr. Smith that he would be teaching a course in Mississippi. Additionally, Mr. Burke stated that he did not complete the secondary employment form DPS had, and that teaching the course did not have anything to do with performing his official duties at DEM.

Mr. Burke stated that he had raised the issue of working conditions with Mr. Smith at two distinct times, once during a retreat involving management personnel where the comfort level of job satisfaction was scored and was less than 30%. Additionally, Mr. Burke testified that in 2013 he had discussed with Mr. Smith the attrition level at DPS. Mr. Burke testified that once he raised the issue of working conditions with Mr. Smith their working relationship began to change, and became challenging and contentious when Mr. Smith became Mr. Burke's supervisor. Mr. Burke stated that in 2014 Mr. Smith required him to meet weekly in his office to review the work performance of all of Mr. Burke's staff.

Mr. Burke testified that he had discovered in discussing with people who left DPS in late 2013 and early 2014 that, with the exception of one or two people, the vast majority left DPS because they wanted to go work someplace else. It was Mr. Burke's perspective that the reason DPS employees wanted to go work someplace else was the general condition of a lack of respect for individuals who were in positions critical to the agency and who were not being recognized for the programs they had. Mr. Burke also testified that he was assigned 17 projects by Mr. Smith, which was beyond his normal duty of supervising five personnel, and that these assignments were not directed toward him in good faith.

In response to questioning, Mr. Burke testified that as a supervisor with DEM he was expected to know and understand DPS' policies. Mr. Burke also stated that he used his DPS e-mail account when he e-mailed Ms. Kelly that he was gathering support for her recall. Additionally, Mr. Burke stated that although the purpose of his March 19, 2014, e-mail was to seek guidance from Mr. Smith he also stated that the e-mail did not require any action on Mr. Smith's part, and denied that the true purpose of the e-mail was to let Mr. Smith know his side of the story in the event there was some sort of official inquiry about his actions with the representatives of NASAR.

Furthermore, Mr. Burke admitted that he corresponded with various individuals during his investigation of Ms. Kelly while on DEM time and using a DEM e-mail account. He testified that he told OPR investigators that he had only one e-mail account. Mr. Burke also testified in response to questioning that he used his State e-mail account to draft other e-mails to NASAR members for various reasons and had not been directed by anyone at DPS to do this.

In response to questioning, Mr. Burke stated in substance that the actions he took against Ms. Kelly were a direct result of his membership status and responsibility to the agency, and could be characterized at the same time as actions by a life member and a member of an organization and DEM, and that he held membership in NASAR as a result of being a life member of NASAR



and DEM representative. Mr. Burke indicated in substance that he believed that he had a duty to DEM to look at the costs related to NASAR's programs and membership costs as they related to the agency, and that there was an issue of a substantial increase in membership cost for agencies which the new NASAR Board was going to address that would have had a direct financial impact to DEM if it chose to stay in NASAR. Mr. Burke testified that he did not see the financial impact to DEM until the NASAR Board was seated in January 2014 and began to make changes to financial costs for the different programs, and that such action became a "tipping point" for him.

Mr. Burke testified in substance that if the inquiry of Ms. Kelly was characterized as something he did personally by the investigative report it was not his intent, and that the inquiry was "part and parcel" to his responsibility as a member with NASAR as a part of DEM. Mr. Burke also testified in substance in response to questioning that his job functions listed in his Work Performance Standards did not include performing investigations of outside organizations, and that he was not directed to conduct an investigation of Ms. Kelly by Mr. Smith or any other DPS official.

With respect to his NASAR membership, Mr. Burke stated in substance that it was his understanding that he was terminated from that organization due to allegations that there was an ongoing criminal investigation regarding himself. Mr. Burke further indicated in substance that he was aware of the OPR investigation into his conduct and that it was his understanding that someone had released information regarding the OPR investigation to NASAR, and that he believed the person releasing the information was Mr. Smith.

Mr. Burke testified that during the investigation he requested that the investigators get an additional understanding of the situation by interviewing several people whose names he provided to the OPR investigator, but that those interviews had not been conducted. Mr. Burke also stated that the OPR investigation had been flawed, and that his interview had been tape recorded while interviews of other witnesses had not been tape recorded.

Mr. Hourihan testified that he had been a former contractor with the State of Nevada from March 2010 until October 2014, and from October 2014 until May 2015 he was a Program Officer II with DEM. In his role as a Program Officer II he taught courses and provided training. Mr. Hourihan stated that he had known Mr. Burke for 25 years, and that the two men had taught many classes together over the past 20 years. Mr. Hourihan also testified that he had been president of NASAR.

Mr. Hourihan testified he was contacted in his capacity of NASAR President by Director Bartlett and informed that she had received a complaint about Ms. Kelly. Mr. Hourihan stated that he asked Director Bartlett to consult with NASAR's counsel as to what to do. NASAR's counsel informed them that they had the obligation to look into the complaint, and Mr. Hourihan stated that he did so as NASAR president.

Additionally, Mr. Hourihan testified that in November 2013 he resigned his position as NASAR president and asked Director Bartlett to consult with NASAR's attorney as to what to do with the complaint against Ms. Kelly. According to Mr. Hourihan, NASAR's counsel responded and stated that the case could be transferred to another person, so he decided to transfer the case to Mr. Burke because of his past experience as an investigator and because he was a longtime member of NASAR. Mr. Hourihan stated that Mr. Burke did not try and conceal what was happening at DEM with NASAR, and that it was common knowledge. In response to questioning, Mr. Hourihan stated that he had no authority to assign Mr. Burke tasks in connection with his DEM employment.

Concerning the course Mr. Burke taught in Mississippi, Mr. Hourihan testified that he had taught courses like that course in the past, and that both he and Mr. Burke filed paperwork as contractors to conduct the course they taught in Mississippi. He testified that it would not be uncommon to be reimbursed for costs of expenditures for teaching such courses. Additionally, Mr. Hourihan stated that it was his recollection that everyone at DEM was familiar with the fact that both he and Mr. Burke were going to Mississippi to teach the course, but that he had never spoken with Mr. Smith about teaching the course. Mr. Hourihan stated that while he worked at DEM he maintained a desk there. It was his observation that Mr. Smith rarely spoke to employees below him, and acted through other employees.

Mr. Smith testified that he was employed by DEM from October 2011 until May 2015 in the position of Chief; his duties included oversight of the entire DEM office. Mr. Smith recalled the three page e-mail Mr. Burke sent to him on March 19, 2014, describing the situation with NASAR, and said in substance it concerned him because the actions taken by Mr. Burke would have put the State in jeopardy. Additionally, Mr. Smith stated in substance that as the liaison with NASAR Mr. Burke's actions were beyond the scope of this role, and that his communications seemed more personal in nature and had transcended into the State realm. Mr. Smith testified in substance that it was highly unusual for someone to pursue a board of directors as a State representative, and that Mr. Burke's investigation was not part of his assigned job duties set forth in his Work Performance Standards. Mr. Smith indicated that prior to his March 19, 2014, e-mail he had no knowledge of the situation surrounding Mr. Burke's investigation on Ms. Kelly.

Additionally, Mr. Smith testified that he did not view Mr. Burke's e-mail as a request for assistance because of the first statement in Mr. Burke's March 19<sup>th</sup> e-mail. Mr. Smith stated that after receiving this e-mail he had a conversation with Mr. Burke to clarify what was going on with NASAR, and that soon after this he received the request for records from NASAR. Mr. Smith stated in substance that after he received this request he immediately let Mr. Burke know about it and asked Mr. Burke to pull e-mails associated with the names provided to him by NASAR. Mr. Smith stated that Mr. Burke provided him with the e-mails and upon review of the e-mails he became concerned. Mr. Smith stated that it appeared that Mr. Burke was conducting an investigation on behalf of the State because of Mr. Burke's signature block at the bottom of Mr. Burke's e-mails.

Mr. Smith was also concerned about an e-mail in which Mr. Bell proposed to remove membership status for both Mr. Burke and Mr. Hourihan because their actions had caused discredit upon NASAR. Mr. Smith indicated in substance that as a representative of the State, he did not like to have its employees bring discredit upon a national association. Additionally, Mr. Smith testified in substance that at the time Mr. Burke was representing the State as the NASAR representative and that the revocation of his membership could have potentially impacted the State's ability to communicate with NASAR on search and rescue issues.

Mr. Smith testified in substance that Mr. Burke's use of his State e-mail constituted a violation of DPS policy in his mind because of the intensity of the investigation and the amount of time Mr. Burke spent on the State e-mail system conducting an investigation, and that the use of the e-mail became personal in nature and not in the State's best interest.

Mr. Smith stated in substance that he never told NASAR that Mr. Burke was the subject of an OPR or criminal investigation. Mr. Smith testified that he saw when reviewing Mr. Burke's e-mails some serious actions had taken place and that he wanted to make sure that what he saw in the e-mails was true. Mr. Burke also testified that his request for an OPR investigation did not predate that FOIA request from NASAR.

Mr. Smith testified that Mr. Burke did not receive permission to conduct an investigation of Ms. Kelly. Mr. Smith also testified in substance that he was not aware until after the NASAR records request that Mr. Burke had been investigating and sending e-mails about Chris Boyer ("Mr. Boyer") of NASAR and why Mr. Boyer had left his last employer.

Mr. Smith also testified in substance that when Mr. Burke provided him with the e-mails in response to NASAR's records request he found out about Mr. Burke teaching the course in Mississippi because Mr. Burke had spent \$1,000.00 and had invoiced NASAR for repayment. Mr. Smith stated that DPS had a policy concerning outside employment and it stated that a DPS employee needed to have written permission to engage in outside employment from either the division chief or the department's director. Mr. Smith added that Mr. Burke had not requested permission to conduct the course from him and was not aware that he had requested permission from the department's director.

Investigator Brown testified that he was a retired employee of DPS and that he had been a detective sergeant performing internal affairs investigations for OPR, and that was his position at the relevant time of the current grievance. Investigator Brown testified in substance that he had interviewed two employees of the Reno Aces and other people in connection with his investigation of Mr. Burke and that he did not interview people who he felt would not provide relevant information. Additionally, Investigator Brown explained that there was no recording of Mr. Smith's interview because when he and Lieutenant Peeler met with Mr. Smith to collect e-mails from him they had not intended on interviewing him at that time and only did so when they learned that Mr. Smith

was going out of town for an extended period of time. Rather than delay the investigation, Investigator Brown stated in substance that he and Lieutenant Peeler decided to perform the interview at that time without a recorder.

With respect to his investigation of Mr. Burke, Investigator Brown testified in substance that Mr. Burke admitted that his investigation of Ms. Kelly was not authorized by Mr. Smith or anyone at DPS, and that he had characterized his actions as an “inquiry” for his personal review and did not see his actions as a department investigation. Investigator Brown determined that Mr. Burke had misused the State e-mail system because DPS policy prohibited e-mails for personal use or personal gain, and that the e-mail system was to be used for business (DPS) purposes only. Additionally, Investigator Brown testified in substance that some of the e-mails had been sent by Mr. Burke during business hours and that Mr. Burke had used a State of Nevada e-mail address that contained his signature. Investigator Brown stated in substance that Mr. Burke had told him that the State e-mail was the only e-mail he had, that he used the e-mail for everything and that in hindsight had he used a different e-mail he would not be in the current situation.

Investigator Brown also testified that Mr. Burke violated DPS policy by conducting an unauthorized investigation. Investigator Brown said in substance that Mr. Burke had been conducting an investigation because what Mr. Burke was requesting via e-mail was the same information he would have requested as an investigator.

With respect to Mr. Burke engaging in outside employment, Investigator Brown testified that DPS has a policy that states that any employee receiving any type of compensation must have approval prior to engaging in the employment. Investigator Brown concluded that Mr. Burke had engaged in outside employment and that he had not received prior approval from an appropriate person. Investigator Brown stated that the compensation Mr. Burke received was a form of payment since it was payment for Mr. Burke’s travel, meals and lodging.

Investigator Brown testified in substance that it was typical for OPR to have a different date on a complaint than when it was actually filed with OPR because when a supervisor began to conduct an administrative investigation the supervisor contacted OPR and would request a case number. If the supervisor later requested OPR to take over the investigation and OPR agreed to do so the investigation would not be assigned a new case number and the date which the supervisor originally requested a case number would also remain the same. Investigator Brown testified in substance that in this case Mr. Smith had contacted OPR for a case number for an investigation, but that when Mr. Smith received the FOIA request from NASAR he requested OPR take over the investigation.

Mr. Marks testified that he was the Homeland Security Administrator for DEM, and had been with DEM for six years. Mr. Marks testified in substance that he believed working conditions at DEM vastly improved under Mr. Smith from what they were previously, and that Mr. Smith had brought leadership and trust

to help the agency move forward. Mr. Marks also thought that Mr. Smith had brought together DEM management and supervisors and that he listened to their input and worked with them, and that he was honest and approachable, and that he respected all his employees. Furthermore, Mr. Marks testified that working conditions at DEM were not hostile, and that he believed that Mr. Burke and Mr. Smith had a good working relationship that was straightforward and cordial, although he was unaware of the facts of this case until the grievance hearing. Mr. Marks did not believe that Mr. Smith's treatment of Mr. Burke changed after Mr. Burke filed his grievance. However, Mr. Marks also testified in substance that he was out of the office on leave from January 14, 2014, until June 14, 2014.

The EMC discussed and deliberated on Mr. Burke's grievance. It was stated in substance by Committee Member Turessa Russell that Mr. Burke had blurred the line between personal and work-related issues and that there was a need for increased communication between both sides in this matter. Committee Member Russell noted that what was at issue in the grievance hearing was where the line was crossed as far as employment and the personal use of agency e-mail with the impression that the investigation was either an agency investigation or a personal investigation, which went back to DPS' personal use policy. Committee Member Michelle Weyland stated in substance that Mr. Burke was using State e-mail with his signature block and title, and that such action was a Class II violation of DPS' Prohibitions and Penalties.

Co-Vice-Chair Canter stated in substance that although Mr. Burke testified that he believed there would be a financial impact to the State with respect to what was going on at NASAR, none of his e-mails to Mr. Smith ever stated this and that Mr. Burke's e-mails basically focused on who the Board was. It was noted in substance by Co-Vice-Chair Canter that even Mr. Burke's March 19, 2014, e-mail to Mr. Smith did not address financial impact to the State and that Mr. Burke said that he was not asking for help in the e-mail but was making Mr. Smith aware of a situation, which made Co-Vice-Chair Canter believe that Mr. Burke's matter with NASAR was a personal matter and not State business. Additionally, it was stated in substance that the fact that Mr. Burke had no e-mail account other than his State e-mail account was no excuse to use the State e-mail for personal issues.

Co-Vice-Chair Canter, with respect to the outside employment issue, noted in substance that DPS' policy on outside employment was clear, and that it was commonly known that a State employee needed approval for outside employment. Additionally, it was noted that the agency could have easily, under the facts of the matter, given Mr. Burke the maximum punishment of suspension without pay and not a written reprimand.

Co-Vice-Chair Canter requested a motion.

**MOTION:** Moved to deny the grievance because the Grievant had failed to prove that the employer had exceeded or violated its disciplinary process or authority.

**BY:** Committee Member Turessa Russell

**SECOND:** Committee Member Michelle Weyland

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

**8. Public Comment**

There were no comments from the audience or Committee Members.

**9. Adjournment**

**MOTION:** Moved to adjourn.

**BY:** Committee Member Turessa Russell

**SECOND:** Committee Member Michelle Weyland

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