



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
July 24, 2014

Held at the Bryan Building, 901 S. Stewart St., Tahoe Conference Room, 2nd Floor, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada, via videoconference.

Committee Members:

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

Staff Present:

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

- 1. Chair Mark Evans:** 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

Chair Evans requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.

BY: Committee Member Tracy DuPree

SECOND: Committee Member Allison Wall

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

4. Discussion and possible action related to motion to dismiss of Grievance of Imran Hyman, submitted by the Department of Administration, supporting documentation, and related oral argument – Action Item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC” or “Committee”) by the Department of Administration, Division of Human Resource Management (“DHRM”) which was represented by Senior Deputy Attorney General Shane Chesney; Imran Hyman submitted an Opposition on his own behalf.

Senior Deputy Attorney General Chesney argued that the EMC lacked jurisdiction to hear Mr. Hyman’s grievance because the substance of the grievance was that Mr. Hyman was determined to not meet the minimum qualifications for a position. Senior Deputy Attorney General Chesney also argued that NRS 284.245(2) conveys jurisdiction over such disputes within the Nevada Personnel Commission.

Mr. Hyman argued that the Motion to Dismiss filed by DHRM was untimely. He also argued, and Senior Deputy Attorney General Chesney admitted, that DHRM had instructed Mr. Hyman through correspondence to use the grievance process. Mr. Hyman further argued that NEATS, the Nevada Employee Action and Timekeeping System, provided an option for submitting grievances regarding recruitment disputes.

The Committee reviewed the documents submitted, considered the arguments presented and deliberated on the record. Committee Member Allison Wall asked about the specific information that directed Mr. Hyman to the Personnel Commission. Chair Evans answered that in Mr. Hyman’s Exhibit 2, NAC 284.341(6) was cited. He continued that Mr. Hyman was given incorrect information and that while the regulations can be confusing, it was pretty clear that the appropriate venue is the Personnel Commission. Chair Evans stated that the EMC should not be making decisions on qualifications.

Chair Evans requested a motion.

MOTION: Moved to grant the motion to dismiss because the EMC had no jurisdiction to hear the grievance.

BY: Committee Member Tracy DuPree
SECOND: Committee Member Allison Wall
VOTE: The vote was unanimous in favor of the motion.

5. Discussion and possible action related to motion to dismiss of Grievance of Roxyanne Severance, submitted by the Department of Corrections, supporting documentation, and related oral argument – Action Item

A Motion to Dismiss was submitted to the EMC by the agency employer Department of Corrections (“NDOC”) which was represented by Deputy Attorney General Dominika J. Morun. Roxyanne Severance was represented Casey Gillham.

Deputy Attorney General Morun argued that the Committee did not have jurisdiction to hear Ms. Severance’s grievance because it had resulted in a submission to the Inspector General’s (IG’s) office, which is investigating the substance of her allegations. She pointed out that the IG’s investigation was confidential and could not be disclosed to Ms. Severance or discussed at a hearing. Deputy Attorney General Morun further argued that Ms. Severance remains in the same position as she was at the time of the complaint.

Mr. Gillham argued that the grievance was against NDOC, not an employee. He further argued that NDOC said that it did all they could and sent the matter to the Inspector General’s office. The Motion to Dismiss was an attack on the merits of the grievance, not if the EMC had jurisdiction to hear the matter. Mr. Gillham stated that NDOC did not respond to Ms. Severance’s claim of workplace harassment.

Deputy Attorney General Morun responded that personnel matters are confidential. Mr. Gillham argued that the EMC could see if NDOC took any action to protect Ms. Severance. Chair Evans asked if incidents were still occurring from the same person. Mr. Gillham answered in the affirmative. Chair Evans inquired if the incidents have been reported to Risk Management. Ms. Severance answered in the affirmative. Chair Evans asked if there had been any investigation into the new incidents. Mr. Gillham answered that Ms. Severance had been interviewed and as far as he was aware, no further action was taken.

Committee Member Allison Wall asked if Ms. Severance was still in the same position and if anything had been done. Ms. Severance replied that she was in the same position and that nothing had been done. Chair Evans asked for clarification, and Mr. Gillham answered that other than setting precedent, there has been no other recourse.

Deputy Attorney General Morun argued that there appeared to be a misunderstanding about confidentiality. NDOC is not allowed to advise what actions they are taking even at an EMC hearing. She added that there are other venues to pursue Ms. Severance’s concerns.

Chair Evans asked the parties for final comments. Mr. Gillham asked what actions have been taken to protect Ms. Severance. She could testify without getting into personnel matters, but not during a Motion to Dismiss hearing.

Chair Evans opened the hearing to deliberations. Committee Member Tracy DuPree stated that the Grievant deserved a hearing about the way the situation was handled. Committee Member Allison Wall agreed that the grievance should be heard to determine what was done and what has happened since the investigation, not to include confidential matters and the investigation. She continued that NDOC has options to assist an employee after submitting a complaint. Committee Member Sherri Thompson expressed concern about Ms. Severance not receiving any communications about her safety, which is the responsibility of NDOC.

Chair Evans stated if Ms. Severance was now in a position where she felt safe, then the grievance had gone away. He continued that if she did not feel safe, the Committee could determine if NDOC's actions were reasonable or not. Chair Evans also stated that IG investigations tend to be lengthy. Ms. Severance reported her concerns to Risk Management which was the right place.

MOTION: Moved to deny the motion to dismiss because the Committee determined that it has the jurisdiction to hear Ms. Severance's grievance.

BY: Committee Member Tracy DuPree

SECOND: Committee Member Allison Wall

VOTE: Unanimous in favor of the motion.

6. Discussion and possible action related to motion to dismiss of Grievance of Donna Jenkins, submitted by the Department of Corrections, supporting documentation, and related oral argument – Action Item

A Motion to Dismiss was submitted to the EMC by the agency employer Department of Corrections ("NDOC") which was represented by Deputy Attorney General Dominika J. Morun. Grievant Donna Jenkins was not present. The EMC noted that Ms. Jenkins sent an email indicating that she would be unable to attend the hearing.

NDOC argued that the EMC lacked jurisdiction to hear Ms. Jenkins' grievance because the EMC lacked jurisdiction over any alleged harassment. Ms. Jenkins had not been punished, and has since been returned to Search and Escort ("S&E").

During discussion, Chair Evans believed that it is within the agency's prerogative to change an employee's shift or position as long as the employee is not being taken out of their geographical area. Committee Member Allison Wall agreed, stating that the agency was within their authority and that the EMC is not the correct venue to consider claims of harassment or punishment. Committee Member Sherri Thompson agreed.

Chair Evans requested a motion.

MOTION: Moved to grant the motion to dismiss due to the fact that the employee had been moved back into her previous position, and the EMC's lack of jurisdiction to consider claims of harassment.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Allison Wall
VOTE: The vote was unanimous in favor of the motion.

7. Adjustment of Grievances of James Gaida, #2934, 2936 & 2940, Department of Corrections– Action Item; and

Adjustment of Grievances of Adam Luis, #2938 & 2939, Department of Corrections– Action Item

Grievants Correctional Officers Adam Luis and James Gaida (“Grievants”) collectively submitted five separate grievances (#2934, #2936, #2938, #2939 and #2940). Each grievance related to the shift bid occurring from November 25, 2013, to November 27, 2013. The grievances were all based on the interpretation of Administrative Regulation 301 (“A.R. 301”) and the conduct of the shift bid. As the factual basis and the analyses of all the grievances was substantially similar, all the grievances were heard together as one case with the agreement of the parties. Grievants were present in proper person and Nevada Department of Corrections (“NDOC”) was represented by Deputy Attorney General Dominika Morun.

Committee Member Tracy DuPree disclosed that he knew Mr. Corzine, one of the potential witnesses that was listed in the exhibit packet, but had not seen him in five years. He stated that he could be objective.

The exhibits submitted to the EMC prior to the hearing were marked (See Grievants’ Exhibits 1-24 and NDOC’s Exhibits A-J). Neither party objected to any exhibit offered by the other side and all exhibits were submitted. Warden Isidro Baca, Deputy Director of Operations E.K. McDaniel, Human Resource Manager Susie Bargmann, Correctional Officer James Gaida and Correctional Officer Adam Luis were duly sworn.

Chair Evans asked if there were any motions to consider and seeing none, Grievant James Gaida, representing both himself and Mr. Luis, began his opening statement. Mr. Gaida stated that he and Mr. Luis are employed by the Nevada Department of Corrections at the Northern Nevada Correctional Center (“NNCC”). Grievants requested EMC review of grievances in which they argued NDOC improperly conducted the shift bid at NNCC and in the process denied them the ability to bid for positions during the annual bid held from November 25, 2013, to November 27, 2013.

Chair Evans asked Mr. Gaida what resolution the Grievants were seeking. Mr. Gaida replied it would be for NDOC to follow A.R. 301 exactly, since it does not mention Senior Correctional Officers, and to make the warden exempt policy more specific.

In her opening statement, Deputy Attorney General Morun stated that the plain language in A.R. 301 does not say that Senior Correctional Officer positions have to be taken out, and that excluded positions are for Correctional Officer Trainees. She further stated that if the Senior Correctional Officer positions were excluded, the difference would be minimal. A.R. 301 gives the Warden the authority to exempt positions as he is the leader of the prison and needs to make decisions, with approval of the Deputy Director. Ms. Morun continued, that if the Grievants wanted to make changes to the policy, there are other venues, not the EMC. Deputy Attorney General Morun also stated that the Warden met with both Grievants several times.

Mr. Gaida testified that Grievants should have been able to bid for positions along with the rest of the positions open for bid based on seniority. As proposed resolutions, Grievants requested that the annual shift bid be re-bid to include all positions of special designation and with no positions being withheld from bid. Specifically, he testified that NDOC improperly excluded too many positions from bid because A.R. 301 allowed NDOC only to exclude 12.5% of positions from bid for the purposes of allotting those positions to Correctional Officer Trainees for training purposes. It was undisputed that NNCC excluded 12.5% of 219 positions, or 27 positions. Grievants agreed that 12.5% of positions may be excluded, but argued that NDOC improperly included not only positions open to bid for Correctional Officers, but also those open only to Senior Correctional Officers.

Mr. Gaida continued, that because Correctional Officers cannot bid on Senior Correctional Officer positions, those positions should not be included in the total positions to which NDOC multiplies 12.5% to obtain the appropriate amount of excludable positions. It was undisputed that Senior Correctional Officer positions accounted for 20 of the 219 available positions and if the Senior Correctional Officer positions had been excluded from the number of positions for the purpose of calculating the excluded positions, the number of positions NDOC was able to exclude would have been decreased from 27 to 25. Mr. Gaida also argued that NNCC improperly used its authority to declare certain positions exempt from bidding based on a written request from the Warden. He claimed that the Warden used overly broad descriptions that any correctional officer should be able to fill in his description of positions that were exempted from bidding, and that NDOC improperly used these warden exempt positions as means to select Correctional Officers for assignments that they would not be able to obtain based on their seniority.

Mr. Gaida stated that lieutenants were excluded from calculation in the number of excluded positions without being specifically mentioned in A.R. 301, and that Senior Correctional Officer positions should be similarly excluded because Correctional Officers were unable to bid on Senior Correctional Officer positions. Mr. Gaida continued, stating that the descriptions given as justification for the warden exempt positions were so general that every correctional officer in the prison should be able to fill them and the use of such vague descriptions provided for an atmosphere of soft discrimination where certain Correctional Officers were able to be rewarded despite their lack of seniority.

Warden Baca testified that he had decreased the number of warden exempt positions that he had sought approval for in order to open up more positions for bidding. He further testified that warden exempt positions were important for the functioning of NNCC because different officers had different unique skills and in order for NNCC to function at its highest and best level, certain positions needed to be filled with individuals who excelled in certain areas.

Deputy Director McDaniel testified that he reviewed and approved Warden Baca's request for exempt positions and that his requests were similar to those requests made by the wardens of the other correctional institutions in the state. He further testified that every other correctional institution calculates the amount of Correctional Officer Trainee positions based on 12.5% of the number of Correctional Officer and Senior Correctional Officer positions, just as Warden Baca had done at NNCC. He supported Warden Baca's assertion that warden exempt positions are necessary for the facility to run successfully and that Warden Baca's description of exempt positions was sufficiently certain to determine the officers that would qualify for that position. Deputy Director McDaniel also testified to the history of the Senior Correctional Officer position and how that position was related to the position of Correctional Officer. Upon questioning from the EMC, Deputy Director McDaniel stated that there was no requirement that any shifts be put out to bid.

The EMC reviewed the evidence; considered the statements of the witnesses and the arguments of counsel, and the parties; and deliberated on the record. Many of the Grievants' issues had already been resolved; the only remaining issues were those related to the 12.5% rate of positions excluded from bidding pursuant to A.R. 301 and the Warden's application for and NDOC'S approval of the exempt positions. All parties agreed that A.R. 301 governs the shift bidding and that 12.5% of the positions may be properly excluded. A.R. 301 does not specifically require the exclusion of Senior Correctional Officers positions from bidding. NNCC's interpretation of A.R. 301 was consistent with other correctional facilities throughout the state.

Committee Member Tracy DuPree stated that the Grievants wanted a fair bid process and believed from the testimony that it wasn't. Chair Evans answered that it wasn't unfair, and that every hiring decision is preferential. Agencies look for the person with the best set of skills and minimum qualifications. He continued, noting that the process is subjective and that NDOC is following their policy. Committee Member Allison Wall agreed, and how the key factor is safety and efficiency and that was explained to the Grievants. Committee Member Sherri Thompson agreed that it was a complex situation but NDOC did not violate any policies.

Chair Evans requested a motion. EMC Counsel Greg Ott suggested that there be two separate motions.

MOTION: To deny the grievances because the EMC determined the Department of Corrections followed and did not violate A.R. 301.01, paragraph 3, regarding warden exempt positions.

BY: Committee Member Allison Wall
SECOND: Committee Member Tracy DuPree
VOTE: The vote was unanimous in favor of the motion.

MOTION: To deny the grievances because the EMC determined the Department of Corrections did not violate A.R. 301.01, paragraph 5, and followed exclusions correctly.

BY: Committee Member Allison Wall
SECOND: Committee Member Tracy DuPree
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

Chair Evans asked for a motion to adjourn.

MOTION: Moved to adjourn.
BY: Committee Member Tracy DuPree
SECOND: Committee Member Allison Wall
VOTE: The vote was unanimous in favor of the motion.