



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
August 10, 2017

Held at the Division of Insurance Building, 1818 College Parkway, Hearing Room, 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	
Ms. Pauline Beigel	X
Mr. Guy Puglisi	X
Ms. Sandie Ruybalid	
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	
Employee Representatives	
Ms. Donya Deleon	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Zina Cage, Hearing Clerk

1. Co-Vice Chair Guy Puglisi 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

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

MOTION: Moved to approve the agenda.

BY: Member Turessa Russell

SECOND: Member Pauline Beigel

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

4. Approval of Minutes for May 25, 2017 – Action Item

Co-Vice Chair Puglisi requested a motion to adopt the minutes.

MOTION: Moved to approve the minutes.

BY: Member Sherri Thompson

SECOND: Member Turessa Russell

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

5. Discussion and possible action related to Motion to Dismiss Grievance #4740 of George Sorich, Department of Corrections – Action Item

The above-referenced motion to dismiss was heard by the Committee¹ on August 10, 2017. Mr. Brandon Price, Deputy Attorney General, represented Nevada Department of Corrections (NDOC), while grievant George Sorich (“Grievant or Mr. Sorich”) failed to appear.

Mr. Price stated in substance that Grievant was employed at the Northern Nevada Correctional Center (“NNCC”) and had filed his grievance to contest the warden’s decision at NNCC to fill certain exempt posts for which the Grievant had applied. Mr. Price argued in substance that the grievance should be dismissed because the Committee had no jurisdiction to review and second guess what amounted to discretionary decisions by the warden to put certain officers into exempt posts.

Mr. Price explained in substance that around November of each year shift bidding occurs at NDOC for certain posts, and that the posts at issue in Mr. Sorich’s grievance were warden exempted posts. Mr. Price noted in substance that NDOC’s Administrative Regulations (“AR”) specifically excluded the posts at issue in Mr. Sorich’s grievance from the bidding process, so that it did not matter that Grievant believed he was the most senior officer with respect to the post. Mr. Price added in substance that the posts in question were deemed to be critical positions, and that the warden needed to be able to put people into the exempted posts whom he could trust and who had specific skills to fulfill certain duties.

¹ The Committee members present at the hearing representing a quorum were as follows: Co-Vice Chair Guy Puglisi (DHHS), who chaired the meeting; Turessa Russell (UNLV), Sherri Thompson (DETR) and Pauline Beigel (NDOT). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, was also present.

Mr. Price noted in substance that in the *Boone-Sharp* decision the Committee had decline to review the warden’s decision in that matter concerning the removal of Ms. Boone-Sharp, who was working in an exempted position, from the gatehouse because the Committee in part found that it lacked the jurisdiction to review the warden’s discretionary decision. Mr. Price also added in substance that any number of positions can be exempted by the warden from the bidding process.

The Committee, after having read and considered all of the documents filed in this matter, and after having heard the oral argument, deliberated on the issues presented. Member Thompson stated in substance that she thought that the Committee should grant the motion to dismiss because the grievant had not demonstrated that NDOC had violated AR 301, and that the Committee lacked the jurisdiction to review the warden’s decision in the matter. Member Beigel stated in substance that it did not appear as though NDOC had violated the appropriate section of AR 301, but that she was uncomfortable with NDOC being able to exempt an unlimited number of positions from being bid upon. Member Russell stated that she did not have anything to add to these statements, while Co-Vice-Chair Puglisi commented in substance that he did not see that NDOC had violated AR 301, and as such NDOC had the right to run its agency as it saw fit.

On August 10, 2017, the Committee voted² to grant the agency motion to dismiss because it was not shown that NDOC had violated AR 301.01, and because the Committee lacked jurisdiction to review decisions by the warden to select personnel for the exempted position.

MOTION: Moved to grant the agency Motion to Dismiss based on lack of proof the agency violated AR 301.01 and lack of jurisdiction.
BY: Member Sherri Thompson
SECOND: Member Turessa Russell
VOTE: The vote was unanimous in favor of the motion.

6. Discussion and possible action related to Grievance #4681 of Jesse Haines, Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee³ (EMC) on August 10, 2017, pursuant to NAC 284.695 and 284.6955, regarding Grievance No. 4681, filed by Jessie Haines (“Grievant” or “Mr. Haines”). Mr. Haines appeared at the hearing on this date in proper person.

² Sherri Thompson’s motion was seconded by Turessa Russell and carried by a unanimous vote.

³ The Committee members present representing a quorum were: Co-Vice Chair Guy Puglisi (DHHS), who chaired the meeting; Turessa Russell (UNLV), Sherri Thompson (DETR) and Pauline Beigel (NDOT). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, was also present.

Warden Isidro Baca (“Warden Baca”), Associate Warden Ron Schreckengost (“Associate Warden Schreckengost”) and Brandon R. Price, Deputy Attorney General (“Deputy Attorney General Price”), were present on behalf of the employer-agency, the Nevada Department of Corrections (NDOC), and Division of Human Resources Management Analyst IV Keyna Jones (“Ms. Jones”) was present after being subpoenaed by the Committee to provide testimony in the matter. There was an objection to Grievant’s exhibits by Deputy Attorney General Price, who move to strike any reference in Grievant’s packet to NRS Chapter 608 in substance because that chapter, by its own provisions (NRS 608.005), involved private enterprise, and was therefore not applicable to State of Nevada employment and irrelevant. The objection was sustained, and the last page of Mr. Haines’ grievance packet, along with three bullet points referring to NRS Chapter 608 on the 6th page of his grievance were removed from consideration. The parties and witnesses were duly sworn in.

STATEMENT OF THE CASE

Mr. Haines is employed by NDOC as a correctional officer at the Northern Nevada Correctional Center (“NNCC”). In his grievance, Mr. Haines stated in substance that one of his time sheets had been altered, and one hour of mandatory overtime that he had worked on August 22, 2016, had been removed from his altered time sheet, and that it took NDOC a month to pay him for that overtime. Mr. Haines argued in substance that the removal of the one hour of overtime from his time sheet violated the FLSA (Fair Labor Standards Act). Mr. Haines also testified in substance that his time sheet was altered because he did not have the DOC 1000 attached electronically to the time sheet he had submitted.

Mr. Haines indicated in substance that he worked the swing shift (1:00 p.m. - 9:00 p.m.) at NNCC, had to work mandatory overtime if NDOC required him to, and was not allowed to leave NNCC between the end of his shift and any overtime which he was required to work, so that his shift never ended. Mr. Haines argued in substance that because of this he was entitled to shift differential pay.

NDOC argued in substance that Mr. Haines was not entitled to shift differential pay, and that since he had been paid for his one hour of overtime that particular issue was moot. NDOC stated in substance that Grievant was required to be at work for eight hours, from 1:00 p.m. until 9:00 p.m., and on that day Grievant had worked one hour overtime, or until 10:00 p.m. NDOC added in substance that, on his time sheet, Mr. Haines had coded four hours of shift differential pay resulting in a pay increase. NDOC noted in substance that this time sheet was not approved, and was altered in accordance with NAC 284.5255(4).

NDOC stated in substance that the rules for shift differential pay were found in NAC 284.210, and that Grievant did not meet the requirements for shift differential pay, nor could he meet his burden of showing that a statute or regulation had been violated. Additionally, NDOC argued in substance that the Committee had said in past decisions that it could not make other employees apologize to a grievant.

NDOC agreed with Mr. Haines that on August 22, 2016 he worked from 1:00 p.m. until 9:00 p.m., and an hour of overtime, but NDOC did not agree that Mr. Haines was entitled to the paid shift differential.

Associate Warden Schreckengost testified in substance that he was the Associate Warden in charge of operations at NNCC, and had held that position for six years. Associate Warden Schreckengost also testified in substance that his primary job duty was to be chief of security and to supervise the custodial staff at NNCC. Associate Warden Schreckengost explained in substance that there were three shifts of custodial staff at a NNCC, and that the scheduled swing shift was from 1:00 p.m. to 9:00 p.m. Associate Warden Schreckengost testified in substance that it was common for correctional officers to work overtime because it was necessary for NDOC to maintain a specific number of correctional officers in the yard.

Associate Warden Schreckengost stated in substance that the required overtime worked by custodial staff was not considered part of a correctional officer's regular shift. Associate Warden Schreckengost testified in substance that he was familiar with Mr. Haines grievance because it was standard practice for him to answer level one grievances from correctional officers at NNCC. Associate Warden Schreckengost also testified in substance that he recalled a conversation on September 13, 2016, with Sergeant Tolloti where Sergeant Tolloti told Associate Warden Schreckengost that Mr. Haines thought that he was entitled to shift differential pay based on his interpretation of the relevant Nevada Administrative Code. Associate Warden Schreckengost stated in substance that he told Sergeant Tolloti that he would look into it, and that he asked Sergeant Tolloti to touch base with Mr. Haines to see if the issue could be resolved.

Associate Warden Schreckengost stated in substance that he contacted NDOC payroll and Human Resources, and that initially he thought that Mr. Haines' argument for differential pay made sense. However, Associate Warden Schreckengost stated in substance that Human Resources came back with a memorandum setting forth the guidelines connected with shift differential pay and providing various examples, and that Mr. Haines did not meet the guidelines for shift differential pay. Additionally, in response to questioning, Associate Warden Schreckengost testified in substance that the one hour of overtime Mr. Haines worked on August 22, 2016 was not part of his assigned shift. Associate Warden Schreckengost also stated in substance that he had no intention of intimidating or harassing Mr. Haines.

With respect to the DOC 1000, Associate Warden Schreckengost testified in substance that this document was required to be attached to employee time sheets in order to verify that overtime had been worked, and that NDOC had a policy stating this.

In response to questioning, Associate Warden Schreckengost stated in substance that he had no direct knowledge that Mr. Haines time sheet had been altered, but was willing to take Mr. Haines' word that his time sheet had been altered, and that he assumed that Mr. Haines' Sergeant or Lieutenant would have told him about the altered times sheet.

Mr. Haines, during his cross examination of Associate Warden Schreckengost, stated in substance that he was unaware of any NDOC administrative regulation saying that AR1000 forms were required to be attached to employee time sheets in order to show the employee had worked overtime.

Warden Baca testified in substance that he had been the warden at NNCC since October 2012. He further testified in substance that he had the responsibility of addressing employee grievances, among other responsibilities.

Warden Baca stated in substance that Grievant was supposed to work a 1:00 p.m. to 9:00 p.m. shift on August 22, 2016, and that Grievant worked one hour of overtime after the end of his shift. Warden Baca further explained in substance that Mr. Haines' shift was the set amount of time that he was scheduled to work every day, and that overtime was not considered part of a regular shift.

Warden Baca testified in substance that when he initially received Mr. Haines' grievance he was inclined to give him shift differential pay, but that he then conferred with NDOC payroll and they sent him a Memorandum from Teresa Thienhaus (Director of the State of Nevada, Department of Personnel), which provide specific guidance for when shift differential pay was to be paid to employees. Warden Baca stated in substance that in Mr. Haines' situation on August 22, 2016, he worked four hours past 6:00 p.m., but that only three hours past 6:00 p.m. were part of Mr. Haines' regular shift, not four hours, so that Mr. Haines did not qualify for paid shift differential. Warden Baca further stated that NDOC AR 326.03(b) required that the DOC 1000 form to be submitted as proof that overtime was worked because otherwise there was no way to confirm that the overtime had actually been worked, so that a time sheet that included overtime that was submitted without the DOC Form 1000 would not be approved.

Warden Baca indicated in substance that, with respect to corrections of employee time sheets, the procedure was to try and have the employee correct his or her time sheet. Warden Baca further indicated, however, that if it was not possible to have the employee make the correction, and if NDOC was facing the deadline in which to submit time sheets for processing, then NDOC would make the correction itself, and that NDOC had the authority to make such corrections pursuant to NAC 284.5255. Warden Baca also stated in substance that an employee's supervisor is supposed to sign a correctional sheet and give it to the employee whose time sheet had been corrected, but that he did not know if that occurred in Grievant's situation, nor was Warden Baca aware of when the one hour of overtime was awarded back to Mr. Haines.

Warden Baca stressed in substance that Mr. Haines was a good employee, but that NDOC needed to strictly apply the regulations dealing with paid shift differential equally to all employees in order to be fair, and that NDOC needed to be fiscally responsible. Warden Baca also stated that he never harassed or intimidated anyone, nor did he direct anyone else to do so, and that it was

common for NDOC sergeants to discuss employee grievances with employees they work with in an effort to resolve the grievance.

Ms. Jones testified that her job duties included processing payroll for approximately 18,000 State employees in the executive and judicial branches of State government, and that she was familiar with the regulations related to shift differential pay. Ms. Jones indicated in substance that in order to qualify for shift differential pay, the particular employer must provide multiple shifts for its employees to work in a 24-hour period, and then an employee must work a qualifying shift, which was when an employee worked a scheduled shift of eight hours where at least four hours of the shift fell between 6:00 p.m. and before 7:00 a.m. as part of his or her regular shift. The other way an employee could qualify for shift differential pay, according to Ms. Jones, was if the employee worked a shift of at least eight hours and then worked four more hours between the hours of 6:00 p.m. and 7:00 a.m., when the employee would receive shift differential pay for the hours worked between 6:00 p.m. and 7:00 a.m.

Ms. Jones further explained that the shift Mr. Haines worked on August 22, 2016 was not a qualifying shift because at least four hours of his shift did not fall between the hours of 6:00 p.m. and 7:00 a.m., and that he did not work at least eight scheduled hours and then four or more hours between 6:00 p.m. and 7:00 a.m. Therefore, Ms. Jones stated in substance that Mr. Haines was not entitled to shift differential pay. Ms. Jones in substance also corroborated Warden Baca's statement that employers can, in certain situations, correct employee time sheets if necessary to ensure accuracy of the time sheets.

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, and the briefs, evidence, and other 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. Grievant is a correctional officer, and is employed by NDOC at NNCC.
2. On August 22, 2016, Grievant was scheduled to work from 1:00 p.m. until 9:00 p.m.; this was Grievant's shift.
3. Grievant worked an hour of overtime from 9:00 p.m. until 10:00 p.m. on August 22, 2016.
4. Grievant filled out his time sheet and put down four hours of shift differential pay and one hour of overtime.
5. Grievant did not attach DOC 1000 form when he electronically submitted his time sheet for processing.
6. A State employee is entitled to shift differential in two circumstances:

An employer must provide multiple shifts for its employees to work in a 24-hour period, and then an employee must work a qualifying shift. A qualifying shift was when an employee worked a scheduled shift of eight hours where at least four hours of the shift fell between 6:00 p.m. and before 7:00 a.m. as part of his or her regular shift. The other way an employee could qualify for shift differential pay was if the employee worked a shift of at least eight hours and then worked

four more hours between the hours of 6:00 p.m. and 7:00 a.m. See NAC 284.210.

7. Mr. Haines' time sheet was altered by NDOC after he submitted it; however, NDOC legally altered the time sheet in this situation pursuant to NAC 284.5255.
8. Mr. Haines time sheet was altered so that he was not paid shift differential or his one hour of overtime on August 22, 2016.
9. Mr. Haines was contacted by Sergeant Tolloti concerning Mr. Haines' grievance.
10. After initially contacting Mr. Haines, Sergeant Tolloti contacted Associate Warden Schreckengost, who looked into the matter of whether Mr. Haines should have received shift differential pay for working August 23, 2016.
11. Associate Warden Schreckengost initially believed that Mr. Haines was entitled to shift-differential pay. However, Associate Warden Schreckengost, after contacting NDOC Human Resources, received a memorandum setting forth the guidelines connected with shift differential and providing various examples of when shift differential pay was applicable.
12. After reviewing the memorandum Associate Warden Schreckengost determined that Mr. Haines did not meet the guidelines for shift differential pay.
13. Associate Warden Baca also looked into the matter, and he concluded that Mr. Haines was not entitled to shift differential pay for working August 23, 2016.
14. Mr. Haines was subsequently paid for the one hour of overtime which he worked on August 22, 2016.

CONCLUSIONS OF LAW

1. For this grievance, Mr. Haines' burden was to establish that NDOC's decision, that he was not entitled to shift differential pay, 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. Mr. Haines' grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. NDOC had the authority, pursuant to NAC 284.5255, to correct Mr. Haines' time sheet.
6. NDOC's determination that, pursuant to NAC 284.210, Mr. Haines was not entitled to shift differential pay for his shift on August 22, 2016, was supported by the evidence and not arbitrary and capricious, and entitled to deference.
7. NDOC's alteration of Mr. Haines' time sheet pursuant to regulation was legal under the circumstances of this matter.

8. Mr. Haines was paid for the one hour of overtime he worked on August 22, 2016, and accordingly that particular matter is moot.
9. The Committee cannot force one employee to apologize to another employee.
10. 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, it is hereby ORDERED:

Mr. Haines grievance is DENIED.⁴

MOTION: Moved to deny grievance based on lack of jurisdiction, per NAC 284.695 (1), lack of proof the agency violated regulations regarding shift differential, as defined by NAC 284.210.

BY: Member Pauline Beigel

SECOND: Member Sherri Thompson

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

Co-Vice Chair Puglisi adjourned the meeting at approximately 11:22 am.

⁴ Member Pauline Beigel's motion to deny the grievance was seconded by Member Sheri Thompson and carried by a unanimous vote in favor of the motion.