

Joe Lombardo
Governor



Tracy DuPree
Chair

Ava Case
Co-Vice-Chair

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STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
August 19, 2021

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

Committee Members:

Management Representatives	Present
Ms. Mary Jo Scott	
Ms. Jennifer Bauer	
Ms. Mechelle Merrill	X
Ms. Christina Leathers	
Ms. Sandie Geyer	X

Employee Representatives	
Ms. Stephanie Parker – Chair	X
Mr. Gwyn Davies	X
Mr. Tracy DuPree	
Ms. Sherri Thompson	
Ms. Turessa Russell	
Ms. Sonja Whitten	

Staff Present:

Mr. Todd Weiss, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, Interim EMC Coordinator
Ms. Ivory Wright, EMC Hearing Clerk

1. Call to Order

Chair Parker called the meeting to order at approximately 9:00 am.

2. Public Comment

There were no comments from the audience or Committee Members.

3. Committee introductions, meeting overview and/or updates - For discussion only.

Chair Parker opened the meeting with Committee introductions.

Chair Parker introduced Mr. Todd Weiss as the new Deputy Attorney General (DAG) assigned to the EMC.

4. Adoption of the Agenda – Action Item

Chair Parker requested a motion to adopt the agenda.

MOTION: Moved to adopt the agenda.
BY: Member Davies
SECOND: Member Merrill
VOTE: The vote was unanimous in favor of the motion.

5. Approval of Minutes for May 6, 2021 – Action Item

Chair Parker asked if there were any minutes the Committee would like pulled for discussion, there were none.

MOTION: Moved to approve the minutes for May 6, 2021
BY: Member Davies
SECOND: Member Geyer
VOTE: The vote was unanimous in favor of the motion.

6. Approval of Minutes for May 20, 2021 – Action Item

Chair Parker asked if there were any minutes the Committee would like pulled for discussion, there was none.

MOTION: Moved to approve the minutes for May 20, 2021
BY: Member Geyer
SECOND: Member Merrill
VOTE: The vote was unanimous in favor of the motion.

7. Discussion and possible action related to Grievance #7715 of Jennifer Howard, Department of Corrections – Action Item

Chair Parker explained the steps in the hearing process and asked if there were any questions, there were none.

This matter came on for hearing before the Employee-Management Committee¹ (“EMC”) on August 19, 2021 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance No. 7715, filed by State of Nevada Department of Corrections (“NDOC”) employee Jennifer Howard (“Grievant”). The agency-employer, NDOC, did not have any representative in attendance. Grievant, Jennifer Howard, was sworn in and testified at the hearing. There were no objections to the exhibits.

STATEMENT OF THE CASE

Per the Grievant, she was informed in early 2021 that her position as a Retail Storekeeper II at the “canteen,” or in-prison convenience store, of the Northern Nevada Correctional Center (NNCC), a Nevada State correctional facility, had been reclassified from “non-essential” to “essential” by NDOC. Though she was not specifically aware of or privy to any official process or discussions that resulted in this reclassification, it was the Grievant’s understanding that her position as a retailer at NNCC’s canteen had been deemed essential for the purposes of uplifting inmate morale. Grievant disagreed with this reclassification, primarily because inmates’ access to the canteen is strictly a privilege and not a right. Specifically, she testified that the canteen has limited days and hours of operation, closes for all state and federal holidays, closes if there is a shortage of staff, and closes at will any other time as necessary, such as during inmate disturbances or other incidences that require a lockdown of the facility.

As a result of this sudden shift of designation in the Grievant’s position from “non-essential” to “essential”, Grievant was informed by a supervisor that she no longer had the ability to claim what are referred to as “early release,” “late start” or “snow day” benefits. These privileges, which were originally granted by the Nevada Governor, allow employees to appear for work up to two hours after the scheduled start of their shift, without negative consequence to their employment, on designated days where it is determined that severe or inclement weather prevents employees from being able to safely travel to their work location in time for their scheduled shift. Up until January 2021, Grievant’s employment position had always been deemed “non-essential” and she had been allowed to claim the benefits in question without issue up until that time.

Nevertheless, after being informed of these changes and being told that she no longer had the ability to claim these benefits, the Grievant became aware of a fellow, similarly situated retail employee (Retail Storekeeper I) working at her same retail location whom she believed had been allowed to miss the scheduled start of her shift in order to complete a Peace Officer Standards and Training (POST) class. The Grievant believed that this employee had been allowed to claim the same “late start” or “snow day” benefit that she had been told they no longer could utilize as a result of now being classified as “essential” employees. Grievant further believed that other similar employees have also continued to receive such benefits on an apparently discretionary basis. The apparently selective application of benefits between employees resulted in disparate treatment between similarly situated employees.

The Grievant believed that the change in classification of her retail position was inappropriate in that it appeared inmate “happiness” was being put ahead of the safety of Nevada State employees and staff who would be asked to drive through potentially dangerous, inclement weather in order to make their scheduled shift time. The Grievant expressed that she had spoken about the issue with the position reclassification with her supervisor, who reminded her that the change also prevented her from utilizing her allowable sick days or annual leave. The Grievant was adamant that there was no reasonable basis for the reclassification of her retail position to “essential”, which was considered “non-essential” at the time she was originally hired, and that she had been deprived of numerous benefits that she previously possessed as a result². Further, it appeared that these new restrictions on benefits were only being subjectively levied on some similarly situated retail employees, but not others, resulting in unexplained disparate treatment. NDOC has failed to appear or send any representative on its behalf to this proceeding and is thereby unable to answer the Committee’s questions concerning this matter. Grievant requests that her retail worker position be reclassified back to “non-essential” and that all of her previous benefits and privileges that she possessed in her position, prior to the reclassification, be restored. Grievant also requests that all similarly situated employees be provided and allowed to utilize all allowable benefits equally as opposed to on some sort of indeterminate, discretionary basis.

Member Davies made a motion to grant Grievance No. 7715, by resolving that the EMC advise NDOC to reverse their reclassification of the Grievant Retail Storekeeper II position from “essential” back to “non-essential” on the basis that inmate access to the canteen that they operate is a privilege and luxury, and not a legal right. NDOC’s reversal of that reclassification decision and subsequent return of the previous “early release” and “late start” benefits would comport with the Nevada Governor’s promotion and priority of Nevada State employee safety. Member Merrill seconded the motion. The motion carried unanimously.

FINDINGS OF FACT

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

1. Grievant was a non-exempt State of Nevada employee.
2. Grievant was employed by NDOC as a Retail Storekeeper II.
3. Grievant worked at the Northern Nevada Correctional Center in Carson City, NV.
4. At some indeterminate time in late 2020 or early 2021, Grievant's position was apparently reclassified from "non-essential" to "essential".
5. Grievant was then informed by her supervisor that, as a result of that reclassification, she would no longer be able to claim certain benefits she previously enjoyed including use of "late start", "early release" or "snow day" benefits, as has been granted by the Nevada Governor in the interest of employee safety.
6. These benefits allow certain Nevada State employees to miss the scheduled start time of their shift on certain, designated days when travel to and from their place of work could be dangerous based on inclement weather.
7. Grievant was also informed that, with the reclassification, she could no longer utilize her designated sick days or annual leave.
8. After being told of this reduction in benefits, Grievant became aware of a co-worker, employed similarly at her same store as a Retail Storekeeper I, who had been allowed to arrive for a scheduled shift two hours late as she was completing a training class. It is Grievant's understanding that this co-worker had been allowed to utilize the "late start" or "snow day" benefits that she had been told they no longer qualified for.
9. Grievant was aware of additional instances of apparently selective application of which employees could utilize these benefits and which could not.
10. This apparently selective application of available benefits between substantially similar employees has resulted in unfair and disparate treatment of the Grievant.
11. NNCC inmate use of the "canteen" is a privilege and not a right, as is evidenced by the high number of times, days and instances in which the store can close outside of regular hours or even not open at all.
12. Though failing to appear in-person for this hearing, NDOC's response

to the written grievance that it is allowed to accept or deny employee leave for any “good and sufficient reason” is insufficient in this matter given that the benefits primarily at issue were expressly authorized by the Nevada Governor, a higher authority than the agency.

CONCLUSIONS OF LAW

1. A grievance is any act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee. NRS 284.384(6). “Any Condition” includes a State employee’s working conditions.

2. For this grievance, it was Grievant’s burden to establish by a preponderance of the evidence that the reclassification of her employment position of Retail Storekeeper II from “non-essential” to “essential,” and the resultant change in the employee benefits available to her, was an “injustice” under NRS 284.384(6).

3. Through testimony and exhibits, Grievant established by a preponderance of the evidence that the reclassification of her position was improper and should be returned to “non-essential” status given the privileged nature of the inmates’ use and access of a correctional facility’s canteen.

4. The Nevada Governor has instituted the “late start,” “early release” and/or “snow day” benefits for the priority and promotion of Nevada State employee safety.

5. The EMC has no authority to overturn any directive of a State agency, however, pursuant to NRS 284.073(1) the EMC serves in an advisory capacity to the Governor, and has the authority to make recommendations on matters relating to personnel administration. In this instance the EMC determined that it would exercise its authority to advise and recommend that the State agency at issue, NDOC, reverse its’ decision to reclassify the Retail Storekeeper position as “essential” and return the position to the previous “non-essential” classification, along with the subsequent return of previous “non-essential” employee benefits including “late start,” “early release” and/or “snow days.”

6. The EMC would also advise and recommend that NDOC make benefits that are available to one employee equally available and accessible to and by all substantially similar employees without any discretionary utilization or application that could lead to disparate treatment.

DECISION

Grievance No. 7715 is hereby GRANTED. The EMC will advise and recommend that NDOC reverse its previous reclassification of the Retail Storekeeper position from “essential” back to “non- essential.” Further, the EMC recommends that NDOC, subsequent to the reclassification of the Retail Storekeeper position back to “non-essential,” return all previously enjoyed benefits of the non-essential state employees including “late start,” “early release” and/or “snow days,” in congruity with the Nevada Governor’s promotion of State employee safety.

²In addition to the “late start” or “snow day” benefits, Grievant claimed that she had been told by a supervisor that she also could not longer utilize her allocated sick days or annual leave as a result of the reclassification of her position.

MOTION: Moved to grant grievance #7715
BY: Member Davies
SECOND: Member Merrill
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Grievance #7656, Christopher Sonnenberg, Department of Public Safety.....Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing if the matter is based upon an EMC’s previous decision or does not fall within the EMC’s jurisdiction.

Chair Parker asked if agenda items #8, #9, #10 and #11 be discussed together, but then stated they would be discussed separately to avoid confusion.

Chair Parker opened the committee for discussion.

Member Davies asked for clarification that the Committee would be discussing agenda items #8, #9, #10 and #11 separately.

Chair Parker stated yes, separately.

Member Davies stated he was going to say the same things for all the grievances.

Member Davies stated the grievances should all go to hearing.

Member Davies stated the officers were issued the Letter of Instruction (LOI) and they should have the opportunity to argue those LOI’s be removed.

Member Davies stated it looked like the officers “cookie-cuttered” their grievances.

Chair Parker stated she also thought they were the same.

Chair Parker stated that the LOI is not a disciplinary action and that was where she struggled.

Chair Parker stated the LOI's started as disciplinary due to language that referenced discipline that was subsequently removed by the agency, and she was unsure if the Committee had jurisdiction.

Chair Parker stated there was also a pending case in the Employee-Management Relations Board (EMRB) related to this issue.

Member Geyer stated she wanted to point out there is a difference between the incident action plan and the LOI.

Member Geyer stated in the action plan it was directed to the situation with covid and how it was addressed and one of these grievances that indicated they were specifically told if they missed their call out time and were 30 minutes past their call out time they would be disciplined.

Member Geyer stated it did not appear it's in the LOI but mentioned in the grievance of Christopher Bennett #7763 and there seemed to be similar language in these grievances and that they seemed to work for the same unit but also stated, she had other questions as to what the grievance was about.

Member Geyer stated there was too much discussion about a difference comparing with Las Vegas Metro and how that applies and how it was 20 percent more it added to their salary.

Member Geyer stated she agreed with my colleague in the south.

Member Geyer stated she thought it would be appropriate for the Committee to move forward and hear what both parties have to say and give them an opportunity to explain why they have the letter of instruction, but also the incident action plan if it is still in place and how that applies to the letter.

Member Geyer stated she didn't believe the letter of instruction was a typical letter of instruction that you would normally give to an employee who is trying to mentor and facilitate them to do a better job.

Member Geyer thought this to be more of a way that business needs to be conducted it was only directed to the Moapa District and not necessary to all of DPS personnel and had a question why specifically this district or was there another letter of instruction that was given to other DPS personnel in other rural areas.

Chair Parker stated it would be beneficial to have a hearing.

Member Geyer motioned to move grievance #7663 #7658 # 7657 # 7656 forward to hearing.

Member Davies stated they seem to all pertaining to the same matter with the same evidence.

Member Davies asked if the grievances could be combined in a single hearing, and asked if the Committee would direct that, or would the parties have to request it.

Chair Parker stated that staff advised that yes, they can be heard at the same time.

Member Davies asked if that was something we have to do in our motion.

Chair Parker stated no.

Member Davies stated he would second that motion.

There was no Committee discussion.

MOTION: Motion to move grievance #7656, #7657, #7658 and #7633 to hearing.

BY: Member Geyer

SECOND: Member Davies

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

- 9. Discussion and possible action related to Grievance #7657, Milas Sendlein, Department of Public Safety.....Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing if the matter is based upon an EMC's previous decision or does not fall within the EMC's jurisdiction.**

Based on the discussion for grievance #7656, the Committee unanimously voted to grant a hearing for grievance #7657.

- 10. Discussion and possible action related to Grievance #7658, Scott Nelson, Department of Public Safety.....Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing if the matter is based upon an EMC's previous decision or does not fall within the EMC's jurisdiction.**

Based on the discussion for grievance #7656, the Committee unanimously voted to grant a hearing for grievance #7658.

11. Discussion and possible action related to Grievance #7663, Christopher Bennett, Department of Public Safety.....Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing if the matter is based upon an EMC's previous decision or does not fall within the EMC's jurisdiction.

Based on the discussion for grievance #7656, the Committee unanimously voted to grant a hearing for grievance #7663.

12. Public Comment

There were no comments in the North or in the South.

13. Adjournment

Chair Parker adjourned the meeting at approximately 9:55 am.

