



**STATE OF NEVADA**  
**EMPLOYEE-MANAGEMENT COMMITTEE**  
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**Meeting Minutes of the Employee-Management Committee**  
**August 8, 2019**

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**

Mr. Guy Puglisi - Chair	X
Ms. Jennifer Bauer	X
Ms. Pauline Beigel	
Mr. Ron Schreckengost	
Ms. Jennelle Keith	
Ms. Tonya Laney	X

**Employee Representatives**

Mr. Tracy DuPree	X
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	
Ms. Dana Novotny	

**Staff Present:**

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General  
Ms. Nora Johnson, EMC Coordinator  
Ms. Ivory Wright-Tolentino, EMC Hearing Clerk

**1. Call to Order**

Chair Puglisi 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 and meeting overview and/or update - For discussion only.**

Chair Puglisi opened the meeting with Committee introductions.

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

Chair Puglisi requested a motion to adopt the agenda.

**MOTION:** Moved to approve the agenda.

**BY:** Member Thompson

**SECOND:** Member DuPree

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

**5. Chair Puglisi noted that grievance #6378 had been withdrawn and would not be heard.**

**6. Discussion and possible action related to Grievance #5979 of Glenda Stewart, Department of Corrections – Action Item**

This matter came on for hearing before the Employee-Management Committee<sup>1</sup> (“EMC”) on August 8, 2019 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance No. 5979, filed by Senior Correctional Officer Glenda Stewart (“Grievant” or “Officer Stewart”). Grievant was represented by Robert Ashcraft of the Nevada Corrections Association. Personnel Analyst II Megan Bottom (“Ms. Bottom”) represented the agency-employer, Nevada Department of Corrections (“NDOC”). There was an objection made by Grievant to Exhibit D submitted by NDOC that was overruled. Grievant and Division of Human Resource Management (“DHRM”) Keyna Jones (“Ms. Jones”) were sworn in as witnesses and testified at the grievance hearing.

**STATEMENT OF THE CASE**

Grievant stated in substance that NDOC had acted in an arbitrary and capricious manner with respect to Grievant, and was interpreting regulations, particularly NAC 284.2525, in a manner to suit their own

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<sup>1</sup> The Committee members present representing a quorum were: Guy Puglisi (DHHS), who chaired the meeting; Sherri Thompson (DETR), Jennifer Bauer (SPCSA), Tonya Laney (DMV), Turessa Russell (UNLV) and Tracy DuPree (DETR). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, EMC Coordinator, Nora Johnson and EMC Hearing Clerk, Ivory Tolentino were also present.

needs when NDOC in September 2018 adjusted Grievant's pay in order to remove paid holiday premium pay ("PHPRM") for the Memorial Day Holiday 2018 from Grievant's pay and returned 8 hours of annual leave to Grievant in the same process.

Grievant stated in substance that it appeared NDOC was saying that because Grievant did not physically work on Memorial Day 2018 it was not required to pay her anything other than holiday pay, and that Grievant's annual leave pay combined with the holiday pay to result in a wash. Grievant noted that there was no code for a wash.

Grievant also argued in substance that nowhere in the NRS' and NAC's was it stated that a State employee could not take annual leave on a State holiday.

Additionally, Grievant noted in substance that after she submitted her request for leave on Memorial Day 2018 her supervisor approved the leave, and then four months later NDOC took pay back from her, which made it appear as though Grievant was being penalized for using annual leave.

Grievant also alleged that NDOC violated regulation by taking pay from her without the necessary written authorization.

Grievant further argued in substance that she was entitled to use annual leave and sick leave when needed or when she chose to do so, and that she was also entitled to paid holidays.

Additionally, Grievant asserted in substance that NDOC violated NAC 284.251(2), (3), (4) and (5).

Grievant noted that in one of NDOC's responses by John Borrowman to her grievance NDOC stated that annual leave was compensated as time worked in lieu of working.

Grievant further stated in substance that she was told that if she submitted an annual leave request for a holiday it would be considered as though she had worked the holiday, and so Grievant said she submitted her time sheet in such a manner, coding for PHPRM.

However, according to Grievant NDOC eventually told her that she could not submit her time sheet with PHPRM coded in the time sheet, as she did not physically work on the Memorial Day Holiday.

According to Grievant, this contradicted NDOC's acquiescence in allowing its employees to use code holiday PHPRM for the President's Holiday in 2019.

Grievant also noted in substance that for NDOC employees who worked

12 hour days on holidays, since the employee only received 8 hours of holiday pay NDOC had allowed its employees to code four hours of annual leave to reach the full 12 hours of the employee's shift; Grievant therefore questioned why she could not be paid for her annual leave and receive holiday pay at the same time if NDOC apparently allowed this to happen in other situations.

Grievant further asked in substance why it was then not acceptable to allow an employee to take annual leave for the entire day without being penalized, and that she was not asking for more money than what she would have otherwise been entitled to, and that what she was asking for would have been no different than if she had worked the Holiday, in which case she would have received 8 hours of PPHRM and 8 hours of holiday pay.

Grievant stated in substance that the end result of the matter was that NDOC returned her annual leave to her, so that it appears that she never took annual leave for the holiday. Grievant pointed out NAC 284.255(5), which states:

A nonexempt employee who is scheduled to work on a holiday shall report any absence from duty and the reason therefor to his or her supervisor or designated representative as prescribed in writing by the agency. An employee who does not work on that holiday and who fails to report his or her absence to his or her supervisor or a designated representative pursuant to this subsection is not eligible to receive holiday pay.

Grievant argued that NAC 284.255(5) provided the only reason that she should not have been paid for a holiday.

Grievant also in substance suggested that perhaps her time sheet could have been coded paid day off holiday with annual leave, as she had not physically worked on Memorial Day 2018.

Grievant also noted in substance that she understood the confusion because when an NDOC employee took a holiday off they were not necessarily required to also take annual leave, but in her case, as she worked at High Desert State Prison, which is a 24 hour, 7 day a week facility, she needed to take annual leave on Memorial Day for coverage purposes.

In response to questioning, Grievant agreed that she had been paid for a 40 hour week, although she had only worked 32 hours the week of Memorial Day, and that she did not know where the 8 hours she did not work but was paid for came from, as it was not coded anywhere, and as NDOC had returned her annual leave.

Ms. Jones testified in substance that NAC 284.255(5) referred to an

employee in a State agency who would normally work on a holiday, because it was not a “given” that the employee would receive the day off like other employees who worked 8 a.m. -5 p.m. hours.

Ms. Jones stated in substance that the second sentence of NAC 284.255(5) indicated that an employee was required to report if he or she was going to be off on the holiday and the reason for being off, and that this had to be done in advance.

Ms. Jones added that if the employee failed to comply with this requirement then the employee would not be entitled to receive holiday pay. Ms. Bottom noted that NAC 284.255(5) referred to straight holiday pay, as compared to special holiday pay.

Ms. Jones also explained NAC 284.255(3)(c), which stated:

A: (1) Full-time nonexempt employee with an innovative workweek agreement may earn additional holiday pay on an hour-for-hour basis for any hours he or she works in excess of the holiday pay provided in paragraph (a) and in subsection 2, not to exceed the number of hours in his or her established workday as set forth in his or her innovative workweek agreement.

Ms. Jones stated in substance that if an employee worked an innovative work week and came in to work a holiday then the employee received additional base or holiday pay.

Grievant argued in substance, with respect to NAC 284.255(3)(c), that if an employee did not work on a holiday, he or she would still receive holiday pay if the employee reported to their supervisor that he or she would not appear for work on the holiday.

Ms. Jones further testified that in interpreting NAC 284.255, and after reviewing Grievant’s time sheets, she was in agreement that Grievant had been correctly paid by NDOC with the 8 hours of holiday pay, and that it was correct not to have paid premium holiday pay or paid for the annual leave taken by Grievant on the Memorial Day Holiday.

Grievant responded by stating in substance that not all employees automatically received a holiday off, and as a non-exempt employee she had to submit a time sheet noting if she took a holiday off, and questioned why she was not entitled to take annual leave in this situation whether the date the annual leave was taken on happened to be a holiday or not.

Ms. Jones noted in substance that Grievant would be hurting herself if she reported annual leave on a holiday, as it was implied that employees were not required to report annual leave on holidays as all State employees received and were entitled to 11 days of holiday pay.

Ms. Jones further testified that State employees were not required to

report anything else on their time sheets (Grievant argued, however, that as a non-exempt employee in order to receive pay for a day she took off she had to report the day off on her time sheet whether it was a holiday or not).

In response to questioning, Ms. Jones testified in substance, with respect to how a pre-approved annual leave request on a holiday would appear in NEATS (Nevada Employee Action and Timekeeping System), that she would reject a time sheet submitted requesting annual leave on a holiday, as the employee would not be required to work on a holiday, and that the preapproval request would show the rejection.

Furthermore, in response to questioning, Ms. Bottom stated in substance that NDOC employees who wanted to take a day off for a holiday on which the employee was scheduled to work were instructed to leave the employee's time sheet alone and simply use holiday pay.

Grievant questioned whether NAC 284.255(5) actually applied to her situation, as the way she read the subsection it entitled her to request annual leave in writing for a holiday and receive pay for both annual leave and holiday pay.

Ms. Jones responded in substance that she reviewed a prior DHRM memorandum, No 59-11, that discussed holiday pay, and in looking at the examples listed in the memorandum an 8-hour employee not working on a holiday would not need to report leave usage.

Officer Stewart noted that her workday was 12 hours. Ms. Jones explained in substance that Officer Stewart was not being paid for the additional 4 hours that she would have worked on the holiday, and that NAC 284.255(4) did not provide for Officer Stewart to be paid 12 hours for the Memorial Day Holiday.

The EMC deliberated on Officer Stewart's grievance.

Member DuPree stated in substance that the applicable regulations appeared confusing, but he did not see where Grievant had been harmed, and the annual leave she had originally taken for the Memorial Day Holiday was returned.

Member Bauer stated in substance that annual leave was compensation based on time not worked, and that if one looked at what an employee on leave was entitled to with respect to pay in this situation the employee did not work and was already getting paid for time the Grievant did not actually work, so Member Bauer failed to see how NDOC misapplied or violated a regulation in this case.

Chair Puglisi stated in substance that he originally saw Officer Stewart's grievance as involving two issues, the issue of Grievant's annual leave being reversed and the PHPRM being reversed, and that the PHPRM

actually created the overpayment, as an employee needed to actually be working a qualifying shift to receive PHPRM.

Chair Puglisi also stated in substance that he felt the decisions made by NDOC were correct and that Grievant's annual leave was simply "re-banked."

Member Laney stated in substance that although Grievant and her representative had argued that Grievant should not be punished by NDOC for following what was not written, conversely NDOC should not be punished for following the intent of the NRS', for showing no malice and for following the consistency of DHRM Payroll.

Member Laney added in substance that Grievant received the Memorial Day Holiday off and received 8 hours holiday pay, and her annual leave was credited back to her.

Member Laney further stated in substance that if there was any vagueness with the pertinent NAC's the EMC had the ability to make a note to have the NAC's reviewed.

Member Bauer stated in substance that in looking at the language of NAC 284.255(5), the language specified that a non-exempt employee shall report any absence from duty and the reason for the absence to his or her supervisor or the employee was not eligible to receive holiday pay.

Member Bauer noted in substance that the use of reporting did not exist for compensation through annual leave, and that this fact also demonstrated that NDOC had not violated any regulation.

Chair Puglisi added in substance that State employees received 11 holidays and earned 15 days of annual leave each year, and that if employees were paid annual leave, when an employee was paid to be gone, while also receiving holiday pay simultaneously, State agencies likely would not have not budgeted for such events.

Member Thompson commended Grievant and Mr. Ashcraft on their presentation but stated that she did not see where NDOC had violated any regulation.

Member Russell stated in substance that she did not agree with how matters were being handled with respect to holiday pay and the use of annual leave, but she did not find anything in writing indicating that a violation of law had occurred.

Member Bauer moved to deny Grievance # 5979 based on evidence that the employer [NDOC] complied with NAC 284.255 through NAC 284.257. The EMC also recommended that DHRM consider revising regulation or policy for reporting absences from duty on holidays. Member Bauer's motion passed 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 correctional officer at High Desert State Prison (“HDSP”) during the relevant time period.
3. HDSP is a 24-hour facility.
4. Grievant requested annual leave for Memorial Day 2018 (Monday May 28, 2018) approximately one month prior to the Memorial Day Holiday.
5. Grievant’s regular schedule called for her to work Memorial Day 2018.
6. NDOC granted Grievant’s annual leave request for Memorial Day 2018.
7. Grievant took annual leave on Memorial Day 2018.
8. Grievant, when filling out her time sheet which covered the Memorial Day 2018 Holiday, coded for PPHRM and Holiday pay.
9. Approximately three months after Grievant filled out and submitted her time sheet NDOC adjusted Grievant’s time sheet.
10. NDOC adjusted Grievant’s pay and removed PPHRM from Grievant and paid her for Holiday pay of 8 hours. NDOC also returned Grievant’s annual leave of 8 hours.

## **CONCLUSIONS OF LAW**

1. For this grievance, it was Grievant’s burden to establish by a preponderance of the evidence that NDOC was in error when it changed Grievant’s time sheet to take away her PPHRM for the Memorial Day Holiday 2018 while paying her 8 hours of holiday pay for the Holiday, while returning her annual leave.
2. 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).
3. Officer Stewart’s grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
4. The Committee discussed and relied on NAC 282.255-284.257.



5. NAC 284.256 defines PHPRM, and states that an employee receives PHPRM when they are actually working on a holiday that the employee was scheduled to work on.
6. NAC 284.255(2) states:

Except as otherwise provided in paragraph (c) of subsection 3 and subsections 5 and 7, a full-time nonexempt employee whose base hours are 40 hours per week or 80 hours biweekly is entitled to receive 8 hours of holiday pay for any holiday that he or she is in paid status during any portion of his or her shift immediately preceding the holiday.

7. NAC 284.255(5) states:

A nonexempt employee who is scheduled to work on a holiday shall report any absence from duty and the reason therefor to his or her supervisor or designated representative as prescribed in writing by the agency. An employee who does not work on that holiday and who fails to report his or her absence to his or her supervisor or a designated representative pursuant to this subsection is not eligible to receive holiday pay.

8. Pursuant to NAC 284.255(2) and NAC 284.255(5), Grievant was entitled to receive 8 hours of holiday pay for the Memorial Day 2018 Holiday, even though she was not physically working at HDSP on the Memorial Day 2018 Holiday.
9. Annual leave for compensation purposes is compensation paid based on time not worked by an employee and based on accruing permissive leave.
10. If Grievant did not work on the Memorial Day Holiday, she was already being paid (via holiday pay) for time not worked.
11. Thus, Grievant was not entitled to holiday pay and compensation for annual leave taken on the 2018 Memorial Day Holiday.

### **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:

Grievance No. 5969 is hereby DENIED. The EMC also recommends that DHRM consider revising regulation or policy for reporting absences from duty on holidays.

**MOTION:** Moved to deny grievance #5979 based on evidence that the employer complied with NAC 284.255 through NAC 284.257. The EMC also recommended that DHRM consider revising regulation or policy for reporting absences from duty on holidays.

**BY:** Member Bauer

**SECOND:** Member DuPree

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

**7. Public Comment**

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

**8. Adjournment**

Chair Puglisi adjourned the meeting at approximately 11:16 am.