



**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  
September 27, 2018**

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:**

<b>Management Representatives</b>	<b>Present</b>
Ms. Mandy Hagler – Chair	X
Mr. Guy Puglisi	
Ms. Jennifer Bauer	
Ms. Pauline Beigel	
Mr. Ron Schreckengost	X
Ms. Sandie Ruybalid	

<b>Employee Representatives</b>	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	
Ms. Adria White	X
Ms. Sonja Whitten	

**Staff Present:**

Ms. Tiffany Breinig, EMC Counsel, Deputy Attorney General  
Ms. Nora Johnson, EMC Coordinator  
Ms. Ivory Wright-Tolentino, EMC Hearing Clerk

**1. Call to Order**

Chair Hagler 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 Hagler opened the meeting with Committee introductions.

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

Chair Hagler requested a motion to adopt the agenda.

**MOTION:** Moved to approve the agenda.  
**BY:** Member Ron Schreckengost  
**SECOND:** Member Turessa Russell  
**VOTE:** The vote was unanimous in favor of the motion.

**5. Approval of Minutes for July 12, 2018 – Action Item**

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

**MOTION:** Moved to approve the minutes for July 12, 2018  
**BY:** Member Ron Schreckengost  
**SECOND:** Member Adria White  
**VOTE:** The vote was unanimous in favor of the motion.

**6. Approval of Minutes for July 26, 2018 – Action Item**

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

**MOTION:** Moved to approve the minutes for July 26, 2018  
**BY:** Member Ron Schreckengost  
**SECOND:** Member Turessa Russell  
**VOTE:** The vote was unanimous in favor of the motion.

**7. Discussion and possible action related to Grievance #5636 of Liwliwa Caberto, Department of Health and Human Services – Action Item**

Ms. Caberto appeared at the hearing on this date in proper person. Human Resource Officer, Darren Squillante, presented on behalf of the agency/employer, the State of Nevada, Division of Public and Behavioral Health (“DPBH”). Both parties submitted exhibits, to which there were no objections. However, DPBH’s Exhibit C was removed from consideration due to privacy concerns, as stated by EMC Chair Mandy Hagler.

DPBH Clinical Program Manager III Stanley Cornell (“Mr. Cornell”) and DPBH Human Resources Officer Jackie Arellano (“Ms. Arellano”) were

present on behalf of DPBH in order to provide testimony in the matter. Ms. Caberto and both DPBH witnesses were duly sworn in.

### **STATEMENT OF THE CASE**

Ms. Caberto is employed with DPBH as a Psychiatric Nurse II (“PN II”). Ms. Caberto argued in substance that the DPBH Southern Nevada Adult Mental Health Services Nursing Department Hospital Floating Policy, VI-03 (“Floating Policy”)<sup>1</sup> was not followed on March 14, 2018. Upon reporting to work at Stein Hospital (“Stein”) on March 14, 2018, Ms. Caberto was assigned to “float” to the Rapid Stabilization Unit (RSU) at Rawson-Neal Psychiatric Hospital (“Rawson-Neal”) for her 8-hour scheduled work shift. Ms. Caberto further argued in substance, making reference to her Exhibit 4, that her name was on the schedule to float to the RSU at Rawson-Neal although she was not the least senior PN II scheduled to work on March 14, 2018. According to the Floating Policy that was in place on March 14, 2018, “[t]he least senior staff will be floated;” however, the Staffing Department or On Call Nurse Administrator can override the procedure “at any time based on the needs of the hospital.” Grievant Exhibit 5; DPBH Exhibit D.

Ms. Caberto stated in substance, referring to her Exhibit 2, that she attempted to resolve her concerns on January 31, 2018, wherein DPBH staff and nurses met and agreed to follow the Floating Policy based on seniority. Ms. Caberto further noted in substance that the Floating Policy was clarified in a second meeting between DPBH staff and nurses on March 20, 2018, wherein nurses again agreed to follow the Floating Policy based on seniority.

Ms. Caberto, using her Exhibit 7, stated in substance that she received a work reassignment to floor nurse at Stein on June 29, 2017. Ms. Caberto further stated in substance that she had not worked on the floor at Rawson-Neal in two years at the time she was assigned to float to the RSU at Rawson-Neal on March 14, 2018. Ms. Caberto questioned the decision to float her to Rawson-Neal on March 14, 2018, which would require reorientation to the floor position at Rawson-Neal.

Directing the EMC to her Exhibit 9, Ms. Caberto further argued in substance that she attempted to find a resolution to her grievance, but has not heard from Darren Squillante, DPBH Human Resource Officer, despite providing her telephone number to him in an email dated May 11, 2018.

DPBH noted in substance that efforts are made to meet DPBH’s mission to provide quality care and safety to clients. DPBH also stated in substance that efforts are made to assign employees to float based on seniority, but there are times when client needs and care reasons require assignment based on other criteria.

DPBH argued in substance that the Floating Policy was followed on March 14, 2018, noting that the least senior PN II was asked first to float to the RSU at Rawson-Neal. DPBH indicated in substance that the least senior PN II went

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<sup>1</sup> “Floating” is a form of resource sharing to remedy staffing shortages. The purpose of the Floating Policy “is to establish an efficient method to provide adequate and appropriate staff coverage on all units [within the Southern Nevada Adult Mental Health Services] 24 hours a day/7 day a week while ensuring continuity of care, patient and staff safety and to meet the needs of the hospital.” Grievant Exhibit 5; DPBH Exhibit D.

home after being asked to float, at which point Ms. Caberto was asked second to float to the RSU at Rawson-Neal. DPHN further stated in substance that Ms. Caberto went home after being asked to float, which resulted in the most senior PN II being asked to float to the RSU at Rawson-Neal, who also went home after being asked. DPBH added in substance that Stein was short staffed and was unable to float an employee, resulting in Rawson-Neal having to either pay overtime or hire a temp to meet minimum staffing requirements.

DPBH reiterated in substance that the Floating Policy was followed on March 14, 2018, as all three PN IIs were met with in order of least to most senior and asked to float to Rawson-Neal. DPBH added in substance that since Ms. Caberto's assignment to Stein in July 2017, March 14, 2018, was the only date in which she was asked to float to Rawson-Neal.

Additionally, DPBH stated in substance that DPBH has worked with staff to modify the Floating Policy to first request volunteers to float before the Administrator can override such procedure and assign an employee to float.

Mr. Cornell testified in substance that the Floating Policy in effect on March 14, 2018, was the original policy when Stein first opened, and it applied to both Stein and Rawson-Neal. Mr. Cornell further testified in substance that on March 14, 2018, Rawson-Neal was short staffed and required float coverage from an 8-hour shift nurse from Stein. Mr. Cornell noted in substance that any reference to Ms. Caberto on the March 14, 2018, schedule as the float nurse was an error. Mr. Cornell stated in substance that Stein attempted to satisfy the request from Rawson-Neal by first asking the least senior PN II to float to Rawson-Neal, followed by Ms. Caberto, and then lastly, the most senior PN II was asked to float. Mr. Cornell also stated in substance that because all three PN II nurses went home, Stein was short staffed and was unable to send a float nurse to accommodate Rawson-Neal.

Mr. Cornell further testified in substance that he met with Ms. Caberto and Ms. Arellano to discuss a resolution to Ms. Caberto's grievance, and that the Floating Policy was revised to first accept volunteers to float, and not based on seniority. Mr. Cornell noted in substance that while the new Floating Policy was being finalized, employees were not asked to float to Rawson-Neal.

Ms. Caberto cross-examined Mr. Cornell and questioned why other staff with less seniority than her were not asked to float on March 14, 2018. In response, Mr. Cornell stated in substance that Rawson-Neal had requested nurses to float, not mental health technicians. Ms. Caberto responded in substance that she could have worked as a mental health technician, while the staff with less seniority worked as a nurse at Rawson-Neal.

DPBH, in response to questioning, stated in substance that the Floating Policy in effect on March 14, 2018, was based on seniority within a shift, and that the same person could possibly be selected to float if there are no overriding patient care concerns because they happen to be the most junior. DPBH further stated in substance that the Floating Policy has now been changed to first seek volunteers.

Ms. Caberto, in response to questioning, stated in substance that she did not agree with how the Floating Policy worked, seniority was not considered, and "friends" were not being floated. Upon further questioning, Ms. Caberto responded in substance that she believed cronyism played into the Floating

Policy not being followed. In response to further questioning, Ms. Caberto agreed in substance that the DPBH had the authority to override the Floating Policy of seniority and select a more senior nurse to float to Rawson-Neal.

In closing, Ms. Caberto stated in substance that staffing should be handled by charge nurses, home units should be implemented to provide continuity of care, and nurses from Stein should only be floated at Stein.

DPBH, in closing, stated in substance that DPBH is willing to work with staff and be flexible with scheduling providing that patient care and safety are not impeded. DPBH further argued in substance that March 14, 2018, was the only occasion Ms. Caberto was asked to float to the RSU at Rawson-Neal and that she was not affected because she went home and did not float that day. Further, DPBH stated in substance that the Floating Policy was followed on March 14, 2018, in which the least senior PN II was asked to float first. Lastly, DPBH stated that the Floating Policy has since been revised based on feedback provided by Ms. Caberto and other staff, and that DPBH is willing to fine tune the policy if needed.

The EMC discussed and deliberated on the matter. Committee Member Schreckengost stated in substance that he did not see where DPBH did not follow the Floating Policy. Committee Member White added in substance that she agreed that the Floating Policy was followed, particularly because the Administrator can override the procedure based on the needs of the hospital. The remaining EMC members voiced their agreement that Floating Policy was followed. The EMC voted unanimously to deny the grievance.

### **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 Psychiatric Nurse II with DPBH and was employed as such at the time of her grievance.
2. Grievant was a non-exempt State of Nevada employee.
3. On March 14, 2018, Grievant was scheduled to work an 8-hour shift as a Psychiatric Nurse II at Stein.
4. Due to a staffing shortage, Rawson-Neal required float coverage from an 8-hour shift nurse from Stein.
5. The Stein schedule for March 14, 2018, indicated that Grievant was assigned to “float” to the RSU at Rawson-Neal, which was an error.
6. The Floating Policy in effect on March 14, 2018, required the least senior staff to be floated; however, the Staffing Department or On Call Nurse Administrator could override such procedure “at any time based on the needs of the hospital.”
7. The least senior nurse scheduled for an 8-hour shift was asked first to float to Rawson-Neal. The least senior nurse went home after being asked to float.
8. The Grievant was the next least senior nurse scheduled for an 8-hour shift on March 14, 2018.
9. The Grievant was asked second to float to Rawson-Neal. The Grievant went home after being asked and did not float to Rawson-Neal on March 14, 2018.

## CONCLUSIONS OF LAW

1. For this grievance, it was Grievant's burden to establish that the DPBH Floating Policy was not followed on March 14, 2018.
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. Ms. Caberto's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. Pursuant to the DPBH Floating Policy in effect on March 14, 2018, the least senior staff member was to be asked first to float.
6. Pursuant to the DPBH Floating Policy in effect on March 14, 2018, the Administrator can override the floating procedure based on the needs of the hospital.
7. In compliance with the Floating Policy, the least senior nurse was asked first to float to Rawson-Neal, followed by Ms. Caberto, as the next least senior nurse.
8. DPBH followed the Floating Policy on March 14, 2018.

**MOTION:** Moved to deny grievance #5636 based on agency policy was not violated, therefore, the grievant was not harmed  
**BY:** Member Ron Schreckengost  
**SECOND:** Member Adria White  
**VOTE:** The vote was unanimous in favor of the motion.

**8. Discussion and possible action related to Grievance #5694 of Yolanda Fernandez, Department of Employment, Training and Rehabilitation – Action Item**

Chair Hagler stated she would allow the Committee a few minutes to review the packet.

Chair Hagler opened the Committee for discussion.

Member Russell stated the grievance should be moved forward to hearing in order to look at the specifics of what happened and to get testimony from both sides.

Member Schreckengost stated he did not disagree with Member Russell, however, he had concerns this grievance was out of the EMC's jurisdiction.

Member Schreckengost stated the grievant talks quite a bit about hostile work environment, being harassed and retaliation and those are clearly not within the EMC's jurisdiction.

Member Schreckengost stated on page 3 of the grievance 6<sup>th</sup> paragraph down, the grievant stated what the agency did was 'not normal' procedure.

Member Schreckengost stated there was no reference to any policy and while it does not look like any statute was violated, there was no way of knowing if the agency violated their own policy and therefore agreed with Member Russell.

Member White stated the majority of the grievance is outside of the EMC's jurisdiction.

Member White stated the grievant's solution is to be transferred to another office which the EMC cannot grant.

Member White stated she did agree with Members Russell and Schreckengost that there may be pieces to be heard because there is nothing mentioned in the grievance about a policy or statute being violated.

Chair Hagler stated she agreed and there is a lot of talk about harassment and retaliation and the grievant's resolution is a transfer and an investigation, which is something the EMC does not have the authority to grant.

Chair Hagler stated her concern was the crux of the grievance is the grievant feels she was brought in and was not allowed to have representation, but the EMC has had previous hearings where the Committee has heard the same thing.

Chair Hagler stated the employee does not have to be allowed representation unless they are being placed under a formal investigation.

Chair Hagler stated it has been determined the agency has the right to speak to their employees; if that were removed, supervisors and managers would be unable to have a discussion or meeting with employees without allowing representation, even for minor issues such as tardiness.

Chair Hagler stated the grievant feels retaliated against because she has filed a previous grievance, that is why the agency pulled her in and the grievant was not allowed representation.

Chair Hagler referenced an email from Jeanine Lake (AFSCME Local 4041) dated March 20, 2018 regarding a meeting where the grievant felt she should have representation especially with three management employees in attendance.

Chair Hagler stated she was on the fence as the majority of the grievance falls within the jurisdiction of the EMC, however, the requested resolutions are not solutions the EMC can grant.

Chair Hagler stated if the grievance moved forward, The Chair would have to limit the grievance to whether or not the agency was allowed to bring the employee into a meeting with or without representation, that was the piece the EMC may have jurisdiction over.

Member Russell stated she focused on the incident with the client being aggressive towards the grievant and there was no one that stepped in to help with those circumstances.

Member Russell stated due to that, she was seeing a safety issue.

Chair Hagler stated she saw the safety piece as the grievance went further in, but the start of the grievance was that the employee was pulled into a meeting and not allowed to have representation and when the grievant found out what the meeting was about, that is when she came forward and said no one was

there.

Chair Hagler stated if the Committee was to hear the grievance, what would the Committee accomplish and how would the Committee determine whether or not there were supervisors there and to what extent are they to step in.

Chair Hagler stated the office does have an armed guard for security purposes.

Member Russell stated according to the grievance, security was not present at the time of the incident and if there is only one officer on the premises, one officer cannot be in all the offices at the same time.

Member Russell stated she was not familiar with the layout or the floor plan of the building where this took place.

Member Schreckengost stated the parameters to move the grievance forward must be very narrow.

Member Schreckengost stated his concern is because the grievant talks so much about hostility, harassment and retaliation, would it not be a better use of State resources to inform the grievant there are other venues for her to pursue her grievance, rather than coming before the EMC that can only focus on one issue, the grievant may get more justice having a formal investigation through agencies that have wider jurisdiction.

Chair Hagler stated on page five of the grievance, the grievant stated she still believes she is being retaliated against and requested an investigation into the reason for the March 19, 2018 meeting and not following normal State procedures.

Chair Hagler stated the EMC would not do an investigation but could look at whether or not the agency had the authority to pull her into a meeting with three supervisors.

Chair Hagler stated the NAC allows the agency to consider a transfer but just because a transfer is requested, does not mean it has to be approved.

Chair Hagler stated those could be the two issues heard by the EMC, where the grievant could show the agency violated policy by having a meeting without allowing representation and denying a transfer.

Chair Hagler stated the agency response stated, "the administrator has the authority as stated in NRS 284.375 to use their discretion in transferring employees and at this time it has been determined that your transfer is not in the best interest of the Division."

Chair Hagler stated those would be the two things that could be heard under the jurisdiction of the EMC if the grievance was moved to hearing.

Chair Hagler stated the rest of the issues in the grievance would have to be in another venue through the EEO.

Member Schreckengost stated there is a severe difference in opinion between the grievant and her managers.



Member Schreckengost stated he was empathetic to the grievant, however, it may not be the Committee's best course of action to move to hearing and the grievant may not even know there are other venues.

Member Schreckengost stated he was unsure of what the Committee could do for the grievant, what could provide justice, if in fact, a wrong was done.

Member Schreckengost stated a full-fledged investigation in a different venue may be the best option.

Member Schreckengost stated EEO, State and Federal agencies could have these issues investigated because the EMC cannot adjust this grievance to the grievant's satisfaction.

Chair Hagler stated she agreed and cited an email from Ms. Lake (AFSCME Local 4041) dated May 1, 2018, the majority of it has to do with why the agency will not transfer the grievant, which is the requested resolution but not something the EMC can enforce.

Chair Hagler stated the EMC cannot force the agency to transfer the grievant, but the Committee could see whether or not the agency has the discretion to deny or approve a request for a transfer.

Chair Hagler stated that would be the grievant's burden to prove by a preponderance of evidence that the agency does not have the authority to deny the request for a transfer.

Chair Hagler stated that was within the EMC's jurisdiction if the Committee wanted to move the grievance forward based on that.

Chair Hagler stated that the harassment and retaliation notwithstanding, the Committee could hear whether or not the agency had the authority to bring the grievant into a meeting with three supervisors and not allow representation.

Chair Hagler stated the Committee has heard that issue before, where the grievant was pulled into a meeting and it was determined that the agency does have the authority to do so because the employee was not under a formal investigation.

Chair Hagler stated if there are Committee members that want to put the grievance forward, the motion should be limited to what would be heard and she would ask whomever chairs that hearing be made aware the grievance be limited to specific parts.

Chair Hagler asked if the Committee was ready to make a motion or if more discussion was needed.

Member Schreckengost moved to deny hearing based on the vast majority of the grievance is outside of the EMC's jurisdiction and the Committee does not have the authority to provide the requested resolution.

Chair Hagler opened the Committee to discussion on the motion or requested a second.

Member Russell stated she was uncomfortable with denying hearing because

the Committee cannot grant the requested resolutions.

Member Russell stated the Committee has had multiple instances where the Committee has been able to do something outside of what the grievant wants.

Member Russell stated she agreed the Committee should not hear anything relating to retaliation or harassment as that is not within the EMC's jurisdiction.

Chair Hagler stated there had not been a second and asked Member Schreckengost if he was still standing on his motion or after discussion wanted to change his motion.

Member Schreckengost stated his concern is ultimately, the Committee provide the grievant with good information and he would like to see justice done if the grievant has been wronged.

Member Schreckengost stated he would stand on his motion as he did not feel the EMC could do anything at the Committee level.

Chair Hagler restated Member Schreckengost's motion to answer grievance #5694 without a hearing based on the fact the EMC lacks jurisdiction due to the harassment and retaliation accusations being made in the grievance and cannot provide the resolution the grievant seeks.

Chair Hagler asked if there was a second.

Member White seconded the motion.

Chair Hagler requested in the decision sent to Ms. Fernandez, she be notified there is another venue where she can file.

**MOTION:** Moved to deny hearing for grievance #5694 based on lack of jurisdiction and relief may be provided by Federal law.  
**BY:** Member Ron Schreckengost  
**SECOND:** Member Adria White  
**VOTE:** The vote was 3 to 1 in favor of the motion, with Member Russell voting 'nay'.

**9. Discussion and possible action related to Grievance #5734 of Justin Curry, Department of Health and Human Services – Action Item**

Chair Hagler stated she would allow the Committee a few minutes to review the packet.

Chair Hagler opened the Committee for discussion.

Member White stated this grievance was similar to what was just discussed and that most of what he is grieving is a sexual harassment complaint within his office and that he wants to be reassigned.

Member White stated on page four of the grievance the grievance did get reassigned, but he was concerned the person he filed the complaint against is still working.

Member White stated the Committee should not move the grievance forward to hearing because the Committee cannot provide the assistance the grievant is seeking.

Chair Hagler stated it did appear the grievant has filed a sexual harassment complaint and there is an investigation going on.

Chair Hagler stated on page three of the grievance, the agency give clarification why the grievant was reassigned, he “was given an NPD-32 and the document given was to ensure compliance with NRS 284.387. The document notified the grievant he was subject of an administrative investigation and explain the allegations that were under investigation.”

Chair Hagler stated there was another investigation going on.

Chair Hagler stated the grievant would like a “clear person to listed to a complaint that I may have and tell me why I’m getting reassignment and don’t only reassign me because I made a sexual harassment complaint.”

Chair Hagler stated the sexual harassment clearly does not fall within the EMC’s jurisdiction.

Chair Hagler stated there is already an investigation regarding the grievant’s complaint and one cannot file in two different venues.

Chair Hagler stated the Committee has had this before and EMC decisions where one filed in one venue meant you cannot file in another venue.

Chair Hagler restated there is already an investigation going on through the EEO.

Member Schreckengost stated he agreed with Chair Hagler and did not think the Committee should move the grievance forward.

Member Russell stated she would be comfortable with voting not to move the grievance forward because the EMC lacks jurisdiction but reiterated her issue if the motion states the EMC cannot grant the requested resolution.

Chair Hagler opened the Committee for a motion on grievance #5734.

Member White moved to deny a hearing for grievance #5734 based on lack of jurisdiction.

Chair Hagler opened the Committee to discussion on the motion or requested a second.

Member Schreckengost seconded the motion.

**MOTION:** Moved to deny hearing for grievance #5734 based on lack of jurisdiction.  
**BY:** Member Adria White  
**SECOND:** Member Ron Schreckengost  
**VOTE:** The vote was unanimous in favor of the motion.

**10. Public Comment**

Denise Woo-Seymour (Division of Human Resource Management) stated today was Chair Hagler's last hearing with the EMC.

Ms. Woo-Seymour stated the Committee appreciated all of Chair Hagler's knowledge, experience and control and expressed her thanks on behalf of the Committee.

Chair Hagler stated she enjoyed her 8 years on the Committee, but it was time that new members come in.

Chair Hagler stated she has more responsibility and cannot give the effort required as the Chair but felt the Committee would be in capable hands.

There was no public comment in the South.

## **11. Adjournment**

Chair Hagler adjourned the meeting at approximately 10:25 am.