



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
September 28, 2017

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3138, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 4401, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler–Chair	
Ms. Pauline Beigel	
Mr. Guy Puglisi	X
Ms. Sandie Ruybalid	X
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	
 Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	
Ms. Adria White	
Ms. Sonja Whitten	X

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Mr. Greg Ott, 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 Sonja Whitten

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

4. Approval of Minutes for July 27, 2017 – Action Item

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

MOTION: Moved to approve the minutes.

BY: Member Turessa Russell

SECOND: Member Sonja Whitten

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

5. Discussion and possible action related to Motion to Dismiss Grievance #4281 of Angela Klaus, Department of Employment Training and Rehabilitation – Action Item

In the instant matter, DETR argued that the EMC did not have Jurisdiction to hear this grievance because EMC has stated that it generally will not put itself in the place of an appointing authority, which has a great deal of latitude in the management of its employees under NRS 284.020. DETR further argued that the proposed resolution to be transferred to another supervisor is a management decision based on agency and business needs and within the agencies discretion under NRS 284.020.

At the hearing the EMC noted that the EMC retains the ability to fashion other remedies separate from those proposed by the grievant. The EMC¹, after having read and considered all of the documents filed in this matter and having heard oral argument of behalf of DETR and on behalf of grievant on or about September 28, 2017 failed to vote to dismiss the grievance.² As the Motion to Dismiss was not granted the grievance process moved forward to a full hearing.³

Based on the foregoing, and good cause appearing, pursuant to NAC 284.695, the Motion to Dismiss is hereby DENIED.

¹ The Committee members present at the hearing representing a quorum were as follows: Guy Puglisi (DHHS) Co-Vice- Chair, Sonja Whitten (DHHS), Turessa Russell (UNLV), and Sandie Ruybalid, (DHHS). EMC Coordinator, Nora Johnson and Counsel for the EMC, Deputy Attorney General Greg Ott, were also present.

² The motion offered to deny the Motion to Dismiss failed to get enough votes to pass.

³ The Hearing regarding this grievance also occurred on September 28, 2017 and a decision regarding that grievance will be issued shortly.

MOTION: Moved to deny Agency Motion to Dismiss.
BY: Member Sonja Whitten
SECOND: Member Turessa Russell
VOTE: The vote was unanimous in favor of the motion.

6. Discussion and possible action related to Grievance #4281 of Angela Klaus, Department of Employment Training and Rehabilitation – Action Item

These matters were heard before the Employee Management Committee (“EMC”)⁴ on September 28, 2017 pursuant to NAC 284.695 and NAC 284.6995 regarding grievance #4281 filed by Angela Klaus (“Grievant”). Grievant was present and represented herself and Nevada Department of Employment, Training, and Rehabilitation (“Employer”) was represented by Chief Deputy Attorney General, Cameron Vandenberg.

The exhibits submitted to the EMC prior to the hearing were marked without objection. Grievant, Appeals Referee Connie Grimble, Appeals Referee Kelly Nguyen and Equal Opportunity Employment Officer Donna Romo were duly sworn and appeared at the hearing.

STATEMENT OF THE CASE

Grievant is employed by the Nevada Department of Employment, Training, and Rehabilitation as an Appeals Referee and requested the Committee adjust grievances related to her treatment by her direct supervisor Colleen Bagus. Her request to be reassigned to be supervised by Kelly Nguyen was denied by Employer. Grievant is employed as an Appeals Referee in Las Vegas, she claims a hostile work environment and retaliation against her supervisor alleging that events as early as October of 2015 supported her case. Employer objected to all references to events occurring more than 30 days prior to the submission of her grievance as those events were beyond the statute of limitations of grievance #4281. Employer’s objection was sustained and Grievant was directed to include in her testimony only events occurring within 30 days of February 25, 2017. Grievant testified regarding allegations of supervisor’s disparate treatment from other appeals officers. Appeals Officer Nguyen was called and testified that she had known Grievant since 2006 and served as her supervisor. She had no concerns with Grievant’s conduct or performance, never had a need to write her up and her evaluations exceeded standards. Grievant also had no attendance or case scheduling or splitting issues and that she does not tell employees

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that she supervises when to take lunch or modify their decisions without their knowledge. She also does not restrict employees that she supervises from taking break with administrative staff and prorates cases for time off, when appeals officers have a full docket. She had no objection to grievant being transferred under her supervision.

Appeals Officer Grimble was sworn and testified that she believed that Appeals Officer Carol Stewart received preferential treatment for overtime and that Ms. Stewart had unique circumstances that allowed her supervisor to allow her to hear less cases than other officers.

Equal Opportunity Employment Officer Donna Romo who testified that Grievant approached her regarding work environment and that internal investigations were commenced, but the results of those investigations were confidential. She further testified that the Director of Employer had reviewed Grievant's complaints.

Employer contends that no retaliation was demonstrated by the evidence and the supervisor Bagus was simply exercising supervisory authority and that the testimony received was largely irrelevant as there were no performance evaluations or employee disciplinary actions to adjust. Grievant contends that her supervisor is abusive and requests that she be transferred to another supervisor.

DECISION

NRS 284.073(e) compels the Committee to make final decisions for the adjustment of grievances in accordance with regulations. The Committee conducted a hearing in accordance with NAC 284.6955, reviewed the evidence, considered the statements of the witnesses and the arguments of counsel, and the parties, and deliberated regarding the proper disposition of these grievances on the record. The Committee noted that there was a resolution conference and the EMC encourages dispute resolution if both parties are open to it. After discussion, the Committee voted⁵ to deny the grievance because Employer did not abuse its discretion under NRS 284.020(2) in not granting Grievant's request to transfer supervisors.

Based on the above and the foregoing, the above mentioned grievance is hereby DENIED.

MOTION: Moved to deny grievance based on NRS. 284.020(2).
BY: Member Sandie Ruybalid
SECOND: Member Turessa Russell
VOTE: The vote was unanimous in favor of the motion.

⁵ Sandie Ruybalid's Motion passed unanimously.

7. Discussion and possible action related to Grievance #4864 of Henry Godecke, Department of Corrections – Action Item

Mr. Godecke presented his opening statement.

Mr. Godecke stated the statute was clear and did not believe the NAC gave the agency the sole discretion regarding overtime and the employees should have the right to choose compensatory time.

Mr. Godecke stated that employees are the ones doing the work and should have some say in how employees are compensated.

Mr. Godecke stated the agency and personnel department have tools to control the amount of compensatory time on the books, and stated he wondered if the agency had exhausted all the opportunities to control the distribution of compensatory time before taking the action of changing the compensation.

Mr. Kevin Pick, representing Nevada Department of Corrections presented his opening statement.

Mr. Pick stated this grievance is about the accrual of compensatory time as a form of compensation for overtime.

Mr. Pick stated that any discussion about compensatory time begins and ends with the relevant NAC provision, in this case, NAC 284.250.

Mr. Pick stated section one of that provision sets forth a default rule, which is essentially, overtime will be paid at cash at time and a half.

Mr. Pick stated, there is an exception to that rule, set forth in subsection 2. This exception states an employer and an employee “MAY” enter into an agreement to compensate overtime with compensatory time.

Mr. Pick stated the language “may” is discretionary on the part of both the employee and the employer. Both have to agree, and form an agreement, otherwise, the default rule applies which is payment for overtime at time and a half.

Mr. Pick stated that in the past, Department of Corrections (NDOC) has allowed employees a form 1084. The 1084 form allows an employee to elect compensatory time in lieu of cash for overtime, however, paragraph 3 of form 1084 states that either party can rescind the agreement with 30 working days’ notice.

Mr. Pick stated the grievant signed the form 1084, agreed to its terms and agreed that any party could rescind the agreement with 30 working days’ notice.

Mr. Pick stated on January 23, 2017, Deputy Director Borrowman (NDOC) issued a memo stating “comp” time agreements would be rescinded effective March 7, 2017, which is a period of 30 working days from January 23, 2017.

Mr. Pick stated the memo dated January 23, 2017 only affects the accrual of “comp” time after March 7, 2017, not the use of “comp” time already accrued. Mr. Pick stated the memo did not work retroactively.

Mr. Pick stated the reason for the change in policy was the need for certain posts at NDOC to be continually manned. When an employee at one of those posts take “comp” time, it creates a situation where NDOC has to backfill the position with another employee. This causes NDOC to pay out additional overtime or additional “comp” time.

Mr. Pick stated to the extent that Mr. Godecke is suggesting that “comp” time agreements can’t ever be rescinded and that employees should have sole discretion to choose the method of overtime compensation, there are two problems with that argument.

Mr. Pick stated the first is the 1084 form that allowed either party to rescind the election of “comp” time agreement within 30 working days. Mr. Godecke signed the agreement, he understood the agreement and NDOC properly rescinded the agreement.

Mr. Pick stated the second issue is NAC 284.250(2) states that an employee and an employer “may” enter into an agreement. That language is discretionary on the part of NDOC.

Mr. Pick stated an employee under that provision does not have sole authority to determine overtime compensation, it has to be an agreement between the employer and the employee.

Mr. Pick stated any finding to the contrary would conflict with the stated NAC provision.

Mr. Pick stated no injustice has occurred which is grievable, there has been no provision of Nevada law or NAC which has been violated, and the resolution sought by the grievant to give the employee authority to elect “comp” time without the say of NDOC would be contrary to NAC 284.250(2).

Mr. Godecke stated in light of the clarification presented by Mr. Pick, there was no reason for the hearing to proceed.

Co-Vice Chair Puglisi asked Mr. Godecke if he was withdrawing his grievance.

Mr. Godecke stated the NAC was clear, and, as a person of law, would have to agree with Mr. Pick and his explanation.

Mr. Godecke withdrew grievance #4864, before moving into a full hearing.

8. Discussion and possible action/reconsideration related to Grievance of Rozena Downing , College of Southern Nevada – Action Item

Co-Vice Chair Puglisi opened the committee for discussion.

Mr. Robert Whitney opened by stating after the EMC hearing on September 14, 2017, it was noticed by Denise Woo-Seymour, Personnel Analyst, Division of Human Resource Management (DHRM), that according to the dates on the grievance of Rozena Downing, it was determined that no deadlines were missed.

Chair Hagler believed the deadlines were missed, making the grievance not timely and that was the basis for the dismissal of the grievance on September 14, 2017.

Mr. Whitney stated, the timeframes had been verified and it appeared the deadlines were met to file the grievance.

Mr. Whitney stated it was factually incorrect to dismiss the grievance based on not being filed timely.

Co-Vice Chair Puglisi stated he had notes that the appointing authority final signature was on March 27, 2017 and the review response date is dated May 5, 2017 which is 32 working days after the employee signature.

Co-Vice Chair Puglisi stated the employee received the appraisal on March 22, 2017. The employee checked the “disagree” box on the appraisal, but did not check the “request review” box.

Co-Vice Chair Puglisi stated regardless of the dates, the employee received the appraisal on March 22, 2017 and never checked that she requested a review.

Co-Vice Chair Puglisi stated he was not certain how the employer knew the employee was contesting the appraisal, but at some point, the employer did know but there was no response until May 5 and if that placed the appraisal outside the timeframe for request for review.

Co-Vice Chair Puglisi stated if it was outside that timeframe, the request may be moot.

Co-Chair Puglisi stated the appraisal was issued March 22, 2017 and the employee has 10 working days from that date to contest and request review and that box was not checked.

Co-Vice Chair Puglisi stated there were no specific points of view as lined out on the NPD-15.

Member Russell asked would the fact the evaluation was reviewed, change the timelines for filing?

Mr. Whitney stated based on 284.470 it did not appear to be the case.

Mr. Whitney stated the Chair was correct in the employee needed to request the review within 10 days.

Co-Vice Chair Puglisi stated if the grievance was filed timely, the EMC could move it forward to hearing and if the grievance was not filed timely, the grievance was not valid to move forward.

Mr. Whitney stated 284.470(7), except for otherwise provided for by subsection 8, stated the appraisal must include discussion between the employee and their immediate supervisor.

Co-Vice Chair Puglisi stated in practice, the supervisor prepares the appraisal and presents it to the employee. The employee signs the appraisal and can request a review if they disagree, then the employee provides points of disagreement.

Co-Vice Chair stated the employee received the appraisal on March 22, 2017 and signed it but there are no dates noted.

Member Ruybalid stated there is a date that stated March 22, 2017 in the sentence that starts with 12a, date the employee received.

Member Ruybalid stated it was not by the employee signature but it did have the employee initials.

Co-Vice Chair Puglisi stated from March 22, 2017, the employee has 10 working days to request a review.

Co-Vice Chair Puglisi noted the appointing authority signed off on March 27, 2017 but it was not checked with request review and there was no documentation attached to that effect.

Denise Woo-Seymour, Personnel Analyst, (DHRM) requested recognition from the Chair.

Co-Vice Chair Puglisi recognized Ms. Woo-Seymour.

Ms. Woo-Seymour stated on page 2, paragraph 3, first sentence, it looked like a response from the grievant.

Member Ruybalid, read the sentence referenced by Ms. Woo-Seymour that stated “a request for review on March 30, 2017 resulted in no changes made to remove the comments”.

Member Ruybalid stated that would be the grievant disclosing the date.

Co-Vice Chair Puglisi stated that if the committee had that, and the employer’s response was not until May 5, 2017 that was longer than the response time allowed by statute.

Co-Vice Chair Puglisi stated the employer has 10 working days to respond.

Ms. Woo-Seymour stated DHRM has advised agencies the reviewing officer has 10 days to make a recommendation to the appointing authority, and the appointing authority has 10 working days to issue a final determination.

Ms. Woo-Seymour stated unless the reviewing officer and appointing authority are one in the same, the dates could range from 10 working days to 20 working days.

Co-Vice Chair Puglisi stated the timeframe given for this grievance sounded close, but if it was outside of the timeframe, this would be important because if the employer did not respond timely, there would be a good argument for the employee to prevail on what she is requesting.

Member Ruybalid stated she was not sure the grievant is grieved as her evaluation was above standards.

Member Ruybalid asked if that could be included as a reason to deny the grievance.

Co-Vice Chair Puglisi stated that if the appraisal rating is “meets standards” or above, the employee cannot grieve the rating, but if there are comments the employee disagrees with, they can grieve to have them removed.

Member Ruybalid stated the employer agreed to the grievant’s request to have the comments removed, and asked if there needed to be a hearing to formalize that.

Co-Vice Chair Puglisi requested clarification as to where the employer agreed to the employee’s request.

Member Ruybalid stated the employer’s response begins on page 37, and on page 39 stated if the employee is willing to accept the proposed solution to remove the language, the employer would consider this grievance resolved, if the employee was not willing to accept it, then the grievance is denied.

Member Ruybalid stated above that, the comments stated “I will remove the requested statements from the employee’s last appraisal”.

Co-Vice Chair Puglisi stated if the comments had, in fact, been removed, there was no merit to this grievance.

Co-Vice Chair asked Mr. Whitney if there had been a prior decision where a grievance had been filed, had since been resolved and was denied by EMC because it had been resolved.

Mr. Whitney stated that he was not sure how the grievance would be considered withdrawn.

Co-Vice Chair Puglisi stated if this was the response to step 3, how did the grievance get step 4, was the grievant not in concurrence with her own resolution.

Member Ruybalid stated that has been the resolution at every step, but the employee kept elevating it for higher review.

Member Russell stated on page 43, there was a paragraph where the employee stated where she disagreed with the appraisal.

Member Russell stated it may be worthwhile to move this grievance forward to potentially educate employees in the process.

Co-Vice Chair Puglisi stated it sounded as though the employee would have been satisfied with the resolution, but the comments made in the employer response may carry forward.

Co-Vice Chair Puglisi stated there may not be any other choice but to calendar this grievance for hearing.

MOTION: Moved to schedule the grievance of Rozena Downing for hearing at a future date.

BY: Member Turessa Russell

SECOND: Member Sonja Whitten

VOTE: The vote was 3 to 1 with Member Ruybalid opposed.

9. Discussion and possible action related to Grievance #5114 of Kerin McCann-Cervantez, Department of Corrections – Action Item

Co-Vice Chair Puglisi opened the committee for discussion.

Co-Vice Chair Puglisi stated the grievant stated she wanted this handled by EEOC, and the issues contained in the grievance are appropriate for

that venue. They are claims of racism, retaliation, discrimination, bullying and violation of the Healthcare Information Act which are all provided a separate venue by Federal law.

Co-Vice Chair Puglisi stated the committee could deny this grievance without a hearing due to lack of jurisdiction for the allegations.

Mr. Whitney stated on page one, there was a citation stating "I would like the AR's regarding nepotism followed". That may be an issue the committee could look at.

Mr. Whitney stated there was no mention of anyone being related to someone else, it was more the complaint being about the hiring of a group of the same decent.

Member Ruybalid stated she did not see anything in the packet that spoke to the nepotism piece, but would have concerns if the committee did not hear the grievance due to the EEO issues, and missed the allegations of the agency not following their own policy.

Mr. Whitney stated if the grievance is working through EEOC, there is the possibility of another outcome from the EMC versus another venue.

Member Russell stated in reference to nepotism, the grievant stated most of the nursing staff are Philipino and "related to one another in some way".

Member Russell stated there was not enough detail to determine just from that statement.

Member Ruybalid asked would the committee only hear the piece where the grievant asks the AR's be followed regarding nepotism.

Mr. Whitney stated the EMC would have authority to review the AR's to determine if they have been followed or not. The rest of the grievance regarding discrimination would be looked at by EEOC or NERC.

Member Ruybalid stated the EMC may not be able to grant what the grievant is requesting.

Co-Vive Chair Puglisi stated he pulled up the policy in question and it looked like a standard policy, stating, certain relationships cannot have a direct line of authority and there is a provision if people become related after employment.

Member Ruybalid asked if there were prior decisions where the EMC has not granted an investigation or an apology that could be cited, as the grievant is requesting an investigation and apology.

Member Ruybalid stated she did not think the EMC could deny the

grievance in total, with the nepotism piece in the grievance, it is within the jurisdiction of the EMC.

Mr. Whitney stated there are prior decisions stating the EMC cannot order an investigation or have an employee make an apology to another one.

Member Russell stated the only issue in the grievance that could move forward would be clarification regarding the nepotism allegations.

Member Ruybalid stated the EMC could deny the grievance without a hearing, in part, due to lack of jurisdiction on the EEO issues.

Member Ruybalid stated the piece regarding nepotism, The EMC could not grant the proposed resolution, based on prior decisions of not having the authority to order an investigation or apology.

Member Russell stated she was uncomfortable in getting “hung up” on not being able to grant the resolutions, as the committee could come up with another solution to the situation.

Member Russell stated there was a nepotism regulation that the EMC could determine was being followed correctly, or if the agency was in violation.

Co-Vice Chair Puglisi asked if the burden was on the grievant to establish that foundation in their grievance.

Mr. Whitney stated the hearing is to provide a forum for employees to state complaints. The employee has stated the nepotism policy is not being followed.

Member Russell stated she did not see any indication of assistance with putting the grievance together and the committee is more lenient if there is no representation or counsel.

Co-Vice Chair Puglisi stated there is something to this grievance but not for the EMC, more for the EEOC.

Co-Vice Chair Puglisi asked how the committee could state the EMC would only hear the nepotism piece.

Mr. Whitney stated the EMC can communicate that to the grievant ahead of time, as the committee has voted in the past to hear parts of a grievance.

Ms. Woo-Seymour stated the EMC has a template letter that would state to the grievant what would be discussed and what would not be heard.

MOTION: Moved to grant grievance #5114 a hearing on the nepotism issue only, as the other issues are not within EMC jurisdiction.
BY: Member Turessa Russell
SECOND: Member Sonja Witten
VOTE: The vote was unanimous in favor of the motion, under the condition the EMC only hears the nepotism issue.

10. Public Comment

There were no comments from the audience or Committee Members.

11. Adjournment

Co-Vice Chair Puglisi adjourned the meeting at approximately 12:46 pm.