



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 8, 2016

Held at the Richard Bryan Building, 901 S. Stewart St., Tahoe Conference Room, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1100, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler–Chair	
Mr. Guy Puglisi	X
Ms. Claudia Stieber	
Ms. Allison Wall–Co-Vice-Chair	X
Ms. Michelle Weyland	
Ms. Pauline Beigel	X
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	X
Ms. Donya Deleon	
Mr. Tracy DuPree	X
Mr. David Flickinger	
Ms. Turessa Russell	X
Ms. Sherri Thompson	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator
Ms. Jocelyn Zepeda, Hearing Clerk

1. **Co-Vice-Chair Stephanie Canter:** 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 Canter requested a motion to adopt the agenda.

MOTION: Moved to approve the adoption of the agenda.
BY: Committee Member Guy Puglisi
SECOND: Committee Member Tracy DuPree
VOTE: The vote was unanimous in favor of the motion.

4. Approval of Minutes for July 21, 2016 – Action Item

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

MOTION: Moved to approve the minutes.
BY: Committee Member Turessa Russell
SECOND: Committee Member Puglisi
VOTE: The vote was unanimous in favor of the motion.

5. Discussion and possible action related to Motion to Dismiss of Grievance #3912 of Traci House, submitted by the State Public Charter School Authority, supporting documentation, and related oral argument, if any – Action item

A Motion to Dismiss was submitted to the Employee-Management Committee (“EMC”) by the agency employer State Public Charter School Authority (“SPCSA”) which was represented by Senior Supervising Deputy Attorney General Cameron Vandenberg. Grievant Traci House (“Ms. House”) was present in proper person.

SPCSA had filed a previous Motion to Dismiss which was heard on February 11, 2016, and another Motion to Dismiss was continued from June 2, 2016, to September 8, 2016. SPCSA recapped the history of the proceedings and stated in substance the grievance should be dismissed because under the circumstances there was nothing for the Committee to decide because the crux of the grievance was workload. SPCSA explained in substance Ms. House was on paid administrative leave pending an investigation, and that if and when Ms. House returned to work it would be to a different position than her former position, since her former position had been reclassified. SPCSA added in substance if the Committee felt uncomfortable about Ms. House’s workload issue being left unaddressed it could enter a Motion to Dismiss the grievance without prejudice so if Ms. House returned to work and later felt that there was an inequity in her workload she could file another grievance or request another hearing.

Ms. House stated in substance that within a year of being hired in the position of Business Process Analyst with SPCSA there were over 1,000 users on the

database system for the state public charter schools for which she converted data, and that the standard number of technical support staff working in similar positions was one for every 100 users. Ms. House also stated in substance that she told SPCSA Director Patrick Gavin (“Director Gavin”) that her workload was heavy, but schools continued to be added to the database system and the agency needed to look at getting additional staff support. Ms. House further stated in substance nothing had been done in response to the growing database system, even though Director Gavin had said that at some point the agency would address the matter by getting contracted help for Ms. House.

Ms. House also argued in substance she had no time to prepare for the desk study which was performed of her position because she was unable to access her computer during the time when the desk study was being conducted. Additionally Ms. House argued in substance Heather Dapice (“Ms. Dapice”), the Division of Human Resource Management employee who performed the desk study, spent less than an hour interacting with her, and she was in “shock” over what Ms. Dapice’s desk study recommended. Ms. House added in substance she had appealed the results of the desk study but was unaware of the results of her appeal and opposed SPCSA’s Motion to Dismiss.

The Committee, after having read and considered all of the documents filed in this matter, and after having heard oral arguments, deliberated on the issues presented. Co-Vice-Chair Canter stated in substance that because an employee had been reclassified did not mean the amount of work that employee was given changed with the reclassification, and that the issue of workload was what would be heard. Co-Vice-Chair Canter added in substance that since Ms. House was currently on leave the Committee did not know what had changed with respect to her workload. Co-Vice-Chair Allison Wall (“Co-Vice-Chair Wall”) noted there was no proposed resolution in Ms. House’s grievance and asked in substance what the Committee was looking at as a proposed resolution.

Co-Vice-Chair Canter stated in substance she agreed with SPCSA’s proposal to grant the Motion to Dismiss without prejudice because Ms. House was currently on administrative leave and no one knew what her workload would be when she returned. Co-Vice-Chair Wall stated in substance she supported granting the Motion to Dismiss without prejudice. Committee Member Guy Puglisi stated it would be “heading in the right direction” if the Committee granted the agency’s Motion to Dismiss at this point.

MOTION: Moved to grant the Motion to Dismiss without prejudice.
BY: Committee Member DuPree
SECOND: Committee Member Puglisi
VOTE: The motion passed unanimously.

6. Discussion and possible action related to Motion to Dismiss of Grievance #4276 of Jonathan Allen-Ricksecker, submitted by the Department of Corrections, supporting documentation, and related oral argument, if any – Action Item

A Motion to Dismiss was submitted to the EMC by the agency employer Department of Corrections (“NDOC”) which was represented by Deputy Attorney General Michelle D. Alanis. Richard McCann (“Mr. McCann”), Executive Director of the Nevada Association of Public Safety Officers, represented Jonathan Allen-Ricksecker (“Mr. Allen-Ricksecker” or “Grievant”).

NDOC argued in substance Mr. Allen-Ricksecker’s grievance arose from a February 23, 2016, sick leave, non-Family and Medical Leave Act (“FMLA”) event where Mr. Allen-Ricksecker had coded the event 7.14 hours sick leave and the remaining .46 hours as annual leave. NDOC further argued in substance when Mr. Allen-Ricksecker’s timesheet was reviewed by his supervisor he was questioned about his annual leave usage since it was not pre-approved, and subsequently the .46 hours was changed to leave without pay (“LWOP”). NDOC continued in substance as a result, Mr. Allen-Ricksecker filed his grievance in which he wanted the LWOP removed, for NDOC to comply with the FMLA and NAC 284.5811, and for NDOC to discontinue its requirement of having its employees use all sick leave prior to using annual leave. NDOC stated in substance Mr. Allen-Ricksecker’s grievance should be dismissed for three reasons: the grievance was untimely; the underlying issue had been resolved; and there was no violation of law.

With respect to the first reason, NDOC stated in substance NAC 284.678 required a grievance be filed within 20 days of the date of the origin of the grievance or when the employee discovers the problem for which the grievance was filed and it was NDOC’s position that the date of origin of Mr. Allen-Ricksecker’s grievance was not when he was told that his timesheet needed to be coded as LWOP in February 2016, because he had been fully aware of the requirement of exhausting sick leave prior to that time, and that in fact Mr. Allen-Ricksecker had been approved for FMLA leave in February 2015. NDOC further stated in substance it was NDOC’s position the deadline for Mr. Allen-Ricksecker to have filed his grievance was 20 days after his FMLA approval in February 2015. NDOC added in substance as an NDOC employee Mr. Allen-Ricksecker received an employee handbook and was required to acknowledge he was familiar with NDOC Administrative Regulations and Operational Procedure (“OP”), which included OP 322, the OP concerning FMLA.

NDOC indicated in substance the second reason the grievance should be dismissed was that Mr. Allen-Ricksecker had been allowed to substitute .46 hours of annual leave for the LWOP so no LWOP was used for the specific event and Mr. Allen-Ricksecker had suffered no damages, therefore, the underlying issue was resolved, and per *In re: Grievance of Borgman, #4014*, Mr. Allen-Ricksecker’s grievance should be dismissed.

Finally, NDOC argued in substance the third reason the grievance should be dismissed was NDOC did not violate the law and was in compliance with the FMLA and NAC (Nevada Administrative Code).

Mr. McCann argued in substance that a grievant’s familiarity with an employer’s policy was not the “trigger” for whether a grievant had timely filed his or her grievance. Rather, Mr. McCann stated in substance, the time to file a grievance

was after the grievant was affected or suffered a disadvantage. With respect to Mr. Allen-Ricksecker's grievance being resolved, Mr. McCann noted in substance that although Mr. Allen-Ricksecker appreciated the .46 hours being changed from LWOP, this action had not been selected by the Grievant as one of his remedies.

Concerning whether there was a violation of law or policy with respect to Mr. Allen-Ricksecker's grievance, Mr. McCann stated in substance that was the very reason the Committee should hear the grievance. Mr. McCann argued in substance the FMLA was encompassed in the NAC, but the OP itself provided an unfair characterization of the FMLA. Mr. McCann added in substance that the Grievant was not required to exhaust all his sick leave prior to using other leave with respect to taking FMLA leave per NAC, but pursuant to NDOC policy. Due to Mr. Allen-Ricksecker's particular situation Mr. McCann argued in substance his sick leave was used up every year under FMLA leave, and that he had no sick leave remaining to use if he or his children became ill, and he had no way out of that situation except for the use of LWOP. Mr. McCann added in substance that LWOP was almost guaranteed through Mr. Allen-Ricksecker's personal situation, resulting in the lessening of his benefits by virtue of the FMLA, or the OP which interpreted the FMLA. Mr. McCann stated in substance that this created an anomalous situation, where the Grievant had the benefit of the FMLA, but that NDOC was going to take something away in the order that NDOC decided.

Mr. McCann noted in substance the Committee did not have the authority to rewrite NAC or NDOC policy, but that it had the right and duty to make recommendations to NDOC concerning employees with situations such as Mr. Allen-Ricksecker's situation. Mr. McCann added in substance that it was likely never intended by NDOC that an employee who exhausted his or her sick leave under the FMLA should then have to use LWOP.

Mr. Allen-Ricksecker stated in substance that due to the fact there was a remedy in place in 2015, if he exhausted his sick leave under the FMLA, he suffered no damages until February 2016. Mr. Allen-Ricksecker also stated in substance that he felt that NDOC Operating Procedure conflicted with the NAC dealing with the FMLA. Mr. Allen-Ricksecker added in substance that pursuant to NAC 284.658 the Committee had the authority to hear his grievance and without Committee intervention the issues in his grievance would not be resolved and would continue to affect him.

The Committee, after having read and considered all of the documents filed in this matter, and after having heard oral arguments, deliberated on the issues presented. The Committee unanimously felt the grievance was timely. With respect to whether the grievance was resolved, it was noted in substance by Co-Vice-Chair Canter the Grievant said his grievance was not resolved, and the interpretation of the NAC was an issue the Committee could hear, even though Mr. Allen-Ricksecker's LWOP was eventually changed to annual leave after the grievance was filed. It was also noted in substance by Committee Member Pauline Beigel the Grievant had not been seeking the change from LWOP to annual leave as a resolution.

Co-Vice-Chair Canter stated in substance it was for the Committee to decide whether there was a violation of policy or not after hearing all of the evidence. Co-Vice-Chair Wall stated in substance the grievant seemed to be saying he did not agree with NDOC policy, not whether policy was violated. Committee Member DuPree stated in substance the best remedy was one not available to the Committee, which was for the State to let its employees use any leave as paid time off. Co-Vice-Chair-Canter noted in substance the Committee could not grant a motion to dismiss a grievance because the Committee was unsure of what remedy, if any, to grant a grievant, and the question was whether or not the Committee had jurisdiction to hear the grievance.

MOTION: Moved to deny the Motion to Dismiss.
BY: Committee Member Beigel
SECOND: Committee Member Russell
VOTE: The vote was unanimous in favor of the motion.

7. Discussion related to Grievance #4419 of Aaron Dicus, Department of Corrections – Action Item

Co-Vice-Chair Canter stated in substance the EMC had the authority to hear Grievance #4419 based on the information submitted; Committee Member Russell was in agreement. Co-Vice-Chair Canter also stated in substance the EMC had heard grievances in the past where a Letter of Instruction included discipline. Committee Member Russell added in substance at hearing the Committee had written documents to review, in addition to testimony and argument to consider. Committee Member Puglisi indicated in substance the EMC could not grant the second part of the grievant’s proposed resolution of being removed from his supervisor. Co-Vice-Chair Wall stated in substance she agreed the EMC had jurisdiction to hear the grievance.

MOTION: Moved to move the grievance forward to schedule for hearing.
BY: Committee Member Russell
SECOND: Committee Member DuPree
VOTE: The vote was unanimous in favor of the motion.

7. Public Comment

There were no comments from the audience or Committee Members.

8. Adjournment

Co-Vice-Chair Canter requested a motion to adjourn.

MOTION: Moved to adjourn.
BY: Committee Member Beigel
SECOND: Committee Member Russell
VOTE: The vote was unanimous in favor of the motion.

