

EMPLOYEE-MANAGEMENT COMMITTEE

Testimony, March 15, 2016

Good morning, Senator Settelmeyer and members of the subcommittee, for the record my name is Allison Wall and I serve as the Vice-Chair for the Employee-Management Committee. I am here today to provide you with general information regarding the Committee and answer any questions you may have. The Chair, Mandy Payette, is unavailable and I will be testifying on her behalf.

The Employee-Management Committee, it consists of three management and three employee representatives and three management and three employee alternates. The Division of Human Resource Management provides secretarial services for the Committee. By statute the Committee must meet every three months, but the Committee schedules to have hearings twice per month.

The role of the Committee is to provide the final administrative review of employee grievances, serve in an advisory capacity to the Governor, the Personnel Commission, and the Division of Human Resource Management with respect to all matters of human resource administration and employee relations. It may also receive, consider and make recommendations on matters relating to personnel administration, policy and procedures, provide a forum for the hearing of employees' suggestions, complaints or disciplinary problems, as well as provide a means of communication for disseminating information to employees regarding the personnel program.

Although there are several functions that are associated with the Employee-Management Committee, providing a hearing for employee grievances is the function that most employees and management are familiar with. Grievances can be filed by a permanent classified employee. There are currently approximately 16,251 permanent classified employees in the Executive Branch and approximately 2,676 classified employees in the Nevada System of Higher Education. (The NSHE count includes both permanent and non-permanent classified employees as we do not have the data for just permanent classified NSHE employees.)

A "grievance" means an act, omission or occurrence which a permanent employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but

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not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved.

The term “grievance” does not include any grievance for which a hearing is provided by federal law or a hearing provided by another body regarding the following:

- Classification of positions – Personnel Commission (NRS 284.165)
- Recruitment - refusal to examine or certify an applicant to an eligible list – Personnel Commission (NRS 284.245)
- Appeals regarding catastrophic leave – Committee on Catastrophic Leave (NRS 284.3629)
- An appeal of an involuntary transfer – Hearing Officer (NRS 284.376)
- An appeal of a dismissal, demotion or suspension – Hearing Officer (NRS 284.390)

The Employee-Management Committee does not have the authority to adopt regulations as this function has been assigned in statute to the Personnel Commission. The Personnel Commission did recently approved a number of regulations changes related to procedural issues, primarily to streamline processes. These regulations will be submitted to the Legislative Commission for their consideration.

The Employee-Management Committee does believe that it is the appropriate entity to make the final determination regarding employee grievances as provided for in NRS 284.384. The courts have not been consistent in their determination as to whether the decisions of the EMC are subject to judicial review. As such, the EMC must conduct itself as if it is a mini court hearing in order to provide the appropriate record in the event a grievance is appealed to district court.

This creates an adversarial and uncomfortable situation for both the employee and management, as well as, members of the Committee who do not have any legal training. Because EMC decisions may currently be

appealed for judicial review, agency management are typically represented by a Deputy Attorney General. If the employee is not represented by an employee's association, the employee often feels that he or she must hire an attorney representative resulting in an additional expense. We believe this provides an unnecessary burden on employees and the staff of the Attorney General's Office and also creates an unnecessary formality to resolving employee and management issues. Therefore the EMC is recommending that NRS 233B be amended to disallow decisions of the EMC to be appealed for judicial review.

Additionally, because the EMC consists of lay personnel, we also recommend that grievances for which there is another State or federal administrative complaint process, e.g., those related to discrimination (NERC or EEOC), pay under the Fair Labor Standards Act (federal Dept. of Labor), etc. be removed from the Committees jurisdiction. A few legislative sessions ago, an attempt was made to remove these types of grievances from the EMC's jurisdiction but when the Department of Personnel (the predecessor to the Division of Human Resource Management) recommended regulation changes the LCB Legal Division determined that the appropriate statutory authority for their removal had not been provided.

That completes my brief overview. I would be happy to answer any questions you may have. Additionally, Interim Administrator Peter Long and Deputy Administrator Shelley Blotter are also available to answer questions.

Thank you.