Local 7076

Date: 9/6/2023

Grievance #: NMED_CWA_20230905_Appropriate Placement

Agency: New Mexico Environment Department (NMED)
Immediate Supervisor: James Kenney, NMED Secretary
Human Resources/Labor Relations Contact: Leslie Munoz

Union Representative: Linsey Hurst, CWA NMED Agency VP- Union Steward
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Name of Grievant(s): All NMED Bargaining Unit Employees Not Appropriately Placed
Job Title of Grievant: All NMED positions covered in the collective bargaining agreement and the memorandum of understanding to include Water Resource Professionals.
Worksite/Location: NMED all locations

Nature of Grievance:
On August 8, 2023, Communications Workers of America Local 7076 (CWA) received appropriate placement calculations for all NMED employees via a document request submitted to the State Personnel Office (SPO). Based on NMED's calculations as provided to the SPO, over 90% of our bargaining unit employees are not appropriately placed within applicable pay bands and many have pay rates that are not internally aligned, as required by Section 11 of Article 25 of the Collective Bargaining Agreement (CBA), as executed on July 29, 2021. CWA identified multiple hiring actions completed since July 29, 2021, in which NMED hired new employees with appropriately placed salaries without adjusting current employees' salaries for appropriate placement and internal alignment.

Furthermore, the NMED's failure to comply with appropriate placement and internal alignment requirements also constitutes an ongoing and egregious failure by the NMED to adhere to the requirements State Personnel Board Rule 1.7.4 NMAC Pay.

It is CWA's position that prioritization of budget for appropriate placement of employee salaries in accordance with CBA and SPO Board Rules is a contractual and legal obligation for the NMED.

Article and Sections of the Agreement alleged to have been violated and all other applicable Articles and Sections:

ARTICLE 5. NON-DISCRIMINATION
Section 1. No Employee shall be discriminated against by reasons of Union membership or non-membership or activities on behalf of or in opposition to the Union.

Section 3. All written personnel policies and procedures within an Employer shall be administered and applied consistently. Accommodations required by law shall not be questioned, challenged, or grieved.

ARTICLE 25. PAY
Section 11. New Hire/Transfer Pay.
When establishing the entrance salary of a new or transferred Employee entering the classified service into a bargaining unit classification, the Employer will use appropriate placement and consider internal alignment compared to other Employees in the same classification within the same organizational unit. Appropriate placement takes into consideration factors such as specialized qualifications, experience, training, licensure, education, or certification appropriate to the occupation and job duties of the position, or administrative or court proceedings, or requirements of or pursuant to law, rule, or regulation, and budgetary availability.

A. If a new or transferred Employee's wage would create an inequity with Employees within the same classification and within the same organizational unit, the hiring officer must consult with Human Resources to determine the appropriate wage adjustments for existing Employees. Wages of existing Employees with equivalent or comparable qualifications within the organizational unit in the same classification should be adjusted in accordance with appropriate placement and internal alignment, subject to budget availability.

B. Internal alignment takes into consideration pay issues involving the proximity of one Employee's salary to the salary of others in the same Employer and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed and budgetary availability.

Applicable Regulations and Definitions:
1.7.4.5 C. NMAC "Appropriate placement" means those elements to be considered in determining pay upon hire, promotion, transfer, or reduction including the employee's education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

1.7.4.5 F. NMAC "Contributor proficiency zones" means subdivisions of the pay band that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

1.7.4.5 G. NMAC "In pay band adjustment" means movement within a pay band for demonstrated performance, skill or competency development, or internal alignment, which allows agency management to provide base salary growth within a pay band.

1.7.4.5 H. NMAC "Internal alignment" means an adjustment that addresses pay issues involving the proximity of one employee's salary to the salaries of others in the same agency and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

1.7.4.5 J. NMAC "Pay plan" means a document developed by the director and approved annually by the board, that describes the board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

1.7.4.8 NMAC PAY PLAN:
B. Agencies shall develop and utilize a compensation policy that is in compliance with 1.7.4 NMAC. Agency compensation policies will be filed with, reviewed by, and approved by the director. Subsequent revisions to the compensation policy shall be filed with, reviewed by, and approved by the director prior to adoption of the policy.

1.7.4.12 NMAC ADMINISTRATION OF THE SALARY SCHEDULES:
A. Entrance salary: Upon entrance to a classified position, a newly appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director prior to appointment.
C. Salary upon in pay band adjustment: Agencies may increase an employee's base salary within the assigned pay band once per fiscal year, subject to director approval, budget availability and reflective of appropriate placement. In pay band adjustments may not result in the employee's base salary exceeding the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band.

NMSA 1978 Section 10 Article 7E-19. Public employers; prohibited practices states:
A public employer or the public employer's representative shall not:
E. discharge or otherwise discriminate against a public employee because the employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony pursuant to the provisions of the Public Employee Bargaining Act or because a public employee is forming, joining or choosing to be represented by a labor organization.

All other applicable articles, policies, and regulations.

Relief sought:

1. NMED Management shall immediately cease and desist all discriminatory treatment and actions against current bargaining unit employees over new hires.

2. NMED Management shall bargain in good faith with CWA an Agency compensation policy that adheres to 1.7.4 NMAC and all applicable sections of the CBA. The bargained policy shall include a system/process to review and update appropriate placement and internal alignment of pay for all bargaining unit employees. The policy shall dictate a schedule for appropriate placement and internal alignment review and processing of resultant salary increases for all bargaining unit employees a minimum of once per state fiscal year and/or more frequently where required by SPO Board Rule or applicable sections of the CBA.

3. NMED shall prioritize establishment and maintenance of appropriate placement and internal alignment for all bargaining unit employee salaries in ALL budgetary decision making including but not limited to the annual general fund budget request, grant applications, establishment of fees for fee-based programs, and any other applicable funding sources. In addition, NMED shall anticipate and realistically estimate and incorporate budget for legislative cost of living adjustments (COLA) and request funding increases as appropriate to cover COLA from all employee salary funding sources.

4. NMED shall provide complete documentation of individual employee education and experience analysis and associated calculations directly to each individual bargaining unit employee via email for review. NMED shall provide a two-week comment period for employees to ask questions concerning individual analyses and/or submit additional clarifying information to correct any issues identified. CWA will consider a request for a staggered schedule for this action with prioritization of data issuance to employees based on employee *employer seniority* as defined in Section B of Article 9 of the CBA.

5. NMED shall process In Pay Band adjustments for *all bargaining unit employees* to bring salaries in line with 100% appropriate placement and internal alignment within their respective pay bands. Internal alignment shall be evaluated utilizing a cross agency classification comparable. Splitting the comparable analysis to devalue employees in one work unit over another in a manner that is inconsistent with SPO guidance is also considered a violation of Section 11.B of Article 25 of the CBA which states "Internal alignment takes into consideration pay issues involving the proximity of one Employee's salary to the salary of others in the same Employer and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed and budgetary availability." CWA estimates the cost, including employer costs for benefits, will be approximately $3.6 million based on the spreadsheet submitted by NMED to SPO and provided to CWA in the August 8, 2023, records package.

   CWA requests that the In Pay Band adjustments to resolve pay inequities at NMED be processed as soon as practicable, but no later than October 15, 2023. CWA will request progress reports to evaluate NMED's progress on this action. If NMED is unable to comply with the above deadline for all bargaining unit employees CWA will consider a corrective action plan schedule with a staggered implementation based on prioritization by seniority of employee *employer seniority* as defined in Section B of Article 9 of the CBA.

6. NMED shall make all CWA bargaining unit employees whole by paying back pay for all violations of internal alignment and appropriate placement resulting in more senior employees being paid less than colleagues with less total years of experience and education. NMED shall conduct an evaluation of historical employee pay data for each year or hiring action trigger for evaluation beginning on the date of the execution of the current CBA, July 29, 2021, to the date on which each bargaining unit employee's salary is corrected as required under requested relief #5. Back pay shall include prorated adjustments as applicable for legislative increases adjusted to a percentage of what the employee's base hourly should have been at the time of the increase. Please note that this relief sought does not

prevent individual employees or the CWA from pursuing additional historical back pay for years prior to 2021 and the current CBA, if additional violations of SPO Board Rule or the CBA in effect at the time are identified.

CWA request that the back pay to resolve historical pay inequities at NMED be processed as soon as practicable, but no later than October 15, 2023. CWA will request progress reports to evaluate NMED's progress on this action. If NMED is unable to comply with the above deadline for all bargaining unit employees CWA will consider a corrective action plan schedule with a staggered implementation based on prioritization by seniority of employee *employer seniority* as defined in Section B of Article 9 of the CBA.

7. After completion of back pay evaluation under #6, NMED shall calculate all unpaid PERA employer contributions and corrected annual salaries for submission to PERA with any required documentation to complete the corrective action so that our NMED employees are made whole. Amounts disbursed by NMED to PERA shall include any required lost interest or other fees to correct the issue.

   CWA requests that all PERA payments and annual salary corrections be processed as soon as practicable, but no later than October 15, 2023. CWA will request progress reports to evaluate NMED's progress on this action. If NMED is unable to comply with the above deadline for all bargaining unit employees CWA will consider a corrective action plan schedule with a staggered implementation based on prioritization by seniority of employee *employer seniority* as defined in Section B of Article 9 of the CBA.

Grievant or Union Representative signature: **Date:** 9/6/2023

Linsey Hurst
Digitally signed by Linsey Hurst
Date: 2023.09.06 20:57:26 -06'00'

Linsey Hurst
CWA Agency VP · Steward
NM Environment Department

Megan. Green
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Megan Green
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Siona Briley
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NM Environment Department

Jerome Romero
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Jerome Romero
CWA Region 1 VP · Steward
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Anne Keller
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Anne Keller
CWA Treasurer · Steward
NM Environment Department

Attachments:

1. Grievance # NMED_CWA_20230905 Employee Authorization to Represent Forms

Additional Submissions:

1. Grievance # NMED_CWA_20230905 Records Request – estimated submission date of Friday, September 8, 2023.