



Interoffice Memorandum

Date: November 2, 2009

Subject: Labor/Management Team 10/29/09 Meeting Minutes

To: Labor/Management Team

From: Mylynda Shaskus, Ohio EPA, Division of Surface Water

October 29, 2009, Ohio EPA, remote meeting, 9:55AM-11:30AM

Attendees: Deborah Bailey (phone), Mike Bolas (phone, first half), Heidi Griesmer, Julie Methena (phone), Ken Mettler (phone), Craig Rehkopf, Ryan Sarni, Mylynda Shaskus, Dave Sholtis, Don Starr, Donna Waggener, Bryan Zima (guest)

Absent: Craig Butler, Kelvin Jones, Nita Nordstrom, Natalie Oryshkewych, Mike Sherron, facilitator Alauddin Alauddin

Agenda

- 1) Identify Action Items/Decision Recorder
- 2) Review Minutes/Action Items/Agenda
- 3) District-Specific employee support issues
- 4) Employee Support
- 5) Net Meeting/Video Conferencing options
- 6) Workplace mediation subcommittee update
- 7) Subcommittee reports
- 8) Policies update
- 9) Other business
- 10) Set next agenda

- 1) Owing to technical difficulties, the meeting/call commenced at 9:55 AM.
- 2) Minutes from the September meeting were briefly reviewed. Because of the late start, members agreed to review the minutes on their own and get them to Mylynda to finalize the minutes by close of business Thursday, 11/5.
- 3) Donna agreed to record the October action items.
- 4) **Employee Support** update. Bryan Zima, an Ohio EPA attorney, attended the meeting as a guest, to answer questions regarding employee legal support. First, the committee recapped the issue, in three parts:
 - a) What happens if an employee is sued in the line of duty, since the AG represents the state, not the employee?
 - b) If an employee is a witness to a crime, and is subpoenaed in a third party lawsuit, how should they prepare to testify?

- c) When does an employee speak for themselves, versus for the state, when giving testimony?

In answer to (a), an employee is represented by the AG unless that employee committed a crime or acted outside the scope of their duties, in which case they will need to hire their own attorney.

In answer to (b), if an employee gets subpoenaed for a third party lawsuit, the employee should inform Ohio EPA – Legal office, and they will call the AG. If the employee is being subpoenaed as a bystander (e.g., a car accident witness), the employee will not be represented by the AG, although Ohio EPA – Legal can give employees a 15 minute primer on testifying, if the employee would like one. If the employee is being subpoenaed in a private suit (e.g., water discharge onto a property as a civil suit), again, the employee should contact Ohio EPA – Legal office who will in turn contact the AG. They will determine whether a “state interest” is at stake (i.e., more than just what the employee witnessed). If so, the employee will be represented by an AG, otherwise the employee will not be represented. However, the AG has a limited role in this, since they are neither prosecution nor defense.

In answer to (c), whether an employee is speaking for themselves or the state depends upon the question being asked. For example, questions such as “Was there water coming out of the pipe? How much?” are personal representations. If the questions, for example, are “What does Ohio EPA usually do in that situation?”, then the employee is speaking for the Agency. As a specific example, in the case of “What is the definition of waters of the state?” the employee can either answer based on personal expertise, or can defer to the Director or to Legal to provide a definition.

Overall, it is each employee’s duty to ensure they are adequately prepared before a deposition or testimony. Also, employees always have the right to hire their own attorney if they feel it is necessary.

What advice could or should we be giving to new employees regarding this issue? If subpoenaed, call Ohio EPA – Legal or ask your supervisor to talk to Legal on your behalf before taking any action.

Can we add this advice to new employee orientation? Bryan said he can add it. Don said he will follow up with Bryan about adding this to new employee orientation.

- 5) **District Employee Support.** Nita sent an email around on this topic, which the group should review for discussion at the next meeting. No other issues were brought up.

- 6) **Future L/M meetings, Net Meeting.** How do people feel the remote meeting is working out? This item will be added to the agenda to discuss at the Polaris meeting next month, which will be face-to-face.
- 7) **Policies Subcommittee.** A meeting of the policies subcommittee is scheduled for next week.
- 8) **Incentives Subcommittee.** An agenda needs to be developed prior to the next meeting.
- 9) **Contracting Subcommittee.** Some editorial work remains after the last meeting. The subcommittee will meet again prior to our next LMT meeting.
- 10) **Workplace Mediation Subcommittee.** Funding for this year and next is in place. WPM will not charge us anything for using their services. Now we just need to decide what media we want to use to encourage WPM use. The subcommittee will make recommendations and get back to the group.
- 11) **Policies.**
 - a. Don distributed the Pandemic Planning FAQ from the Governor's Office. We have a Continuity of Operations Plan (COOP) web page that mostly relates to the H1N1 virus. Don will send an electronic copy of the PP FAQ to Heidi and Cathryn to post on the COOP web page. Questions that arose included, can an employee be sent home if they are sick? Yes, following the policy for doing so. If an employee is sent home in such a fashion, as opposed to voluntarily going home, they have the possibility of using Administrative leave. What if an employee is sick and has no sick leave? They can use other types of leave, such as vacation. FMLA does not apply to H1N1. What about cost savings day usage? For exempts, yes, because they must use CSDs before other types of leave. For bargaining unit employees, generally no, but the decision can be made on a case-by-case basis per individual supervisors. Thus far, people sent home sick has not occurred within our agency, and it is not expected to become an issue.
 - b. A Notification of Absence link was added to the sick leave policy, which was last updated in 2007.
 - c. The Weather Emergency Policy was updated and renamed the Public Safety Emergency Policy. According to the policy, essential employees **may** have to work, not **must** work as in the old policy. It was pointed out that every winter grievances on weather emergencies are filed because policy is not widely understood or properly interpreted. The Director cannot declare a weather emergency, only the Director of Public Safety for Ohio can do that. Employees can call the Agency hotline to find out when an emergency has been declared. Emergencies can now be declared for select parts of the state only, it used to be only the whole state. It was

noted that the new policy does not state that employees and supervisors will be allowed flexible leave usage for non-declared weather emergencies. Don said he would add that to the policy.

- d. Policy on policies. The ODOT policy was distributed. The group noted it defines terms such as “policy” versus “procedure”. In the ODOT example, divisions need to bring procedures to the Director’s Office to adopt as policy. Only managers can do so, not regular staff. The group agreed to defer to the subcommittee report on this.

The meeting was adjourned at 11:30 AM.

Next Meeting: November 17th, 9:30AM, OSCEA-Polaris

Agenda:

- 1) Identify action item/decision recorder
- 2) Review minutes/action items/agenda
- 3) District-specific employee support issues
- 4) Employee Support
- 5) Net Meeting/Video conferencing options
- 6) Subcommittee Reports
 - a. Workplace mediation
 - b. Policies
 - c. Incentives
 - d. Contracting
- 7) Policies Update
- 8) Other Business
- 9) Set next agenda