



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
May 02, 2019
(Subject to Committee Approval)

Held at the Nevada State Library and Archives Building, 100 N. Stewart St., Conference Room 110, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 1400, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives

Present

Mr. Guy Puglisi - Chair	X
Ms. Jennifer Bauer	X
Ms. Pauline Beigel	
Mr. Ron Schreckengost	
Ms. Jennelle Keith	
Ms. Tonya Laney	X

Employee Representatives

Mr. Tracy DuPree	X
Ms. Turessa Russell	
Ms. Sherri Thompson	X
Ms. Sonja Whitten	
Ms. Dana Novotny	X

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Ivory Wright-Tolentino, EMC Hearing Clerk

1. Call to Order

Chair Puglisi called the meeting to order at approximately 1:00 pm.

2. Public Comment

There were no comments from the audience or Committee Members.

3. Committee introductions and meeting overview and/or update - For discussion only.

Chair Puglisi opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

Chair Puglisi requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.

BY: Member Thompson

SECOND: Member DuPree

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

5. Approval of Minutes for March 07, 2019 – Action Item

Chair Puglisi requested a motion to adopt the meeting minutes.

MOTION: Moved to approve the minutes.

BY: Member Thompson

SECOND: Member DuPree

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

There were no comments from the audience or Committee Members.

6. Approval of Minutes for March 21, 2019 – Action Item

Chair Puglisi requested a motion to adopt the meeting minutes.

MOTION: Moved to approve the minutes.

BY: Member Thompson

SECOND: Member Laney

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

There were no comments from the audience or Committee Members.

7. Discussion and possible action related to Motion to dismiss Grievance #6041 of Steve Lennon, Department of Corrections – Action Item

The above-referenced motion to dismiss was heard by the Committee on May 2, 2019. Deputy Attorney General Kevin Pick (“Deputy Attorney General Pick”) represented NDOC. Mr. Lennon was present in proper person.

Deputy Attorney General Pick argued in substance that Mr. Lennon was disputing two issues.

The first issue was that NDOC had “jumped the gun” during the November 2018 shift bid and calculated seniority using the December 2018 version of Administrative Regulation (“AR”) 301. By using that method of calculating seniority in the December 2018 version of AR 301, Mr. Lennon argued he was dropped several spots on the bid list and did not get his desired post.

The second issue Mr. Lennon argued, according to Deputy Attorney General Pick, was that the list for bidding was not posted by NDOC 60 days prior to the actual bidding, and Mr. Lennon was not given the full 20 days in which to file a grievance contesting the seniority list.

Deputy Attorney General Pick stated that NDOC was asking the Committee to dismiss Mr. Lennon’s grievance in totality based on several grounds.

First, Deputy Attorney General argued that Mr. Lennon’s grievance was moot. NRS 284.387, according to Deputy Attorney General Pick, required the existence of a grievable injustice which was capable of being adjusted by the Committee.

According to Deputy Attorney General Pick, the shift bid had already occurred, and correctional officers had already bid on and had been assigned posts, shifts, days off and annual leave at NDOC institutions. NDOC was therefore not in a position where it could turn back the clock and change the bidding process that occurred in November 2018.

Furthermore, according to Deputy Attorney General Pick, if NDOC were to redo the 2019 shift bid it would use the current version of AR 301 (the December 2018 version), which used the method of calculating seniority which Mr. Lennon was contesting, so that the result of any rebidding would be the same as the previous bidding. Thus, according to Deputy Attorney General Pick, Mr. Lennon’s grievance was moot because there was nothing presented that the Committee was capable of adjusting.

Deputy Attorney General Pick stated that the heart of Mr. Lennon’s grievance was essentially a dispute over NDOC’s ability to clarify its own AR’s. NRS 284.020, according to Deputy Attorney General Pick, did not limit the authority of department heads to conduct and manage the affairs of their departments as they saw fit.

Also, added Deputy Attorney General Pick, under NRS 209.101 and NRS 209.131 the Board of State Prison Commissions and the NDOC Director were given exclusive authority to implement and mandate agency regulations.

Thus, Deputy Attorney General Pick argued, the Committee could not prevent NDOC from clarifying AR 301 as it did in December 2018 or order NDOC to ignore or change how the current version of AR 301 was worded.

Additionally, Deputy Attorney General Pick argued, there was no grievable injustice in Mr. Lennon's grievance because the entire bid/post bidding process was not required under Nevada law; rather, it was an activity which NDOC had allowed to occur for a number of years, so that if NDOC altered the process there was no grievance because there was no entitlement to the bidding process.

Additionally, the method of calculating seniority that was used in November 2018 was used on every correctional officer and senior correctional officer in the entire state, so there was no injustice present, as every officer was treated exactly the same based on how seniority was calculated.

Lastly, Deputy Attorney General Pick argued that at present there was no remedy available to address Mr. Lennon's grievance, as the Committee could not stop or change the 2019 bid from going forward because the bid had occurred in November 2018. Thus, Deputy Attorney General Pick argued, Mr. Lennon's grievance should be dismissed.

Mr. Lennon argued that he had suffered an injustice, and that the previous bid process had been the same for the entire time he had worked for NDOC. Mr. Lennon stated in substance that the relevant bid list was, according to AR 301, put out numerous weeks prior to the bid, but that 6 days before the bidding process was to start at Warm Spring Correctional Center ("WSSC") the list was changed, which was improper pursuant to NDOC regulation, and that NDOC did not allow changes to the new list.

Mr. Lennon also argued in substance that the correctional officers already knew where and what they would bid for before the bidding process began, and so in essence schedules and shifts were already chosen by the correctional officer.

Mr. Lennon stated in substance that 6 days before the bidding occurred NDOC came into WSSC and changed the bidding process, and that NDOC did not provide an explanation of the changed process until approximately two weeks after the bid had occurred, when NDOC provided an updated version of AR 301.

Mr. Lennon also noted that no other NDOC facility other than WSSC bid in November 2018.

Mr. Lennon also noted that correctional officers were held to a standard requiring them to obey the NRS', the AR's, and yet the NDOC administration broke its own AR's and nothing happened to them, and

that some kind of action needed to occur to prevent this from happening again.

Mr. Lennon also in substance questioned why NDOC waited so long to notify its personnel of the change in its bidding process.

In response to questioning from the Committee, Mr. Lennon stated in substance that he was affected by the changes in the bidding process because on the bidding list used prior to November 2018 he was ahead of certain correctional officers, and when the list changed (from rank to date of hire) he was moved down the bidding list, so that days he wanted off for annual leave were already taken when his chance to bid came, and also because certain positions that were previously available were taken as well.

It was noted in substance by Chair Puglisi that throughout the relevant time period NDOC's AR's were being revised, and that the point of contention with the bidding process that changed everything was the seniority calculation, and that NDOC was waiting on a response from the State of Nevada, Division of Human Resource Management and the Nevada Attorney General's Office on what the interpretation of seniority actually was.

Chair Puglisi further stated in substance that the NAC (284.632) stated that seniority would be calculated from the continuous service date, provided there were no breaks in service. If the Committee were to follow the Administrative Code, according to Chair Puglisi, he could not see where the Committee could find a violation of regulation because the Administrative Code had been followed.

Chair Puglisi also stated in substance that the AR in question was changed twice, and that a memorandum was sent out in December 2018, and that the original AR 301 was adopted on February 8, 2017, but that it had underwent several changes, and that NDOC was amending its AR 301 throughout this time period and communicating with its employees, including on November 20, 2018 and December 11, 2018. It also appeared to Chair Puglisi that NDOC had given its employees a chance to provide feedback concerning the proposed changes to AR 301.

Mr. Lennon also explained how the seniority list functioned as taking an employee who had worked for a State agency for 10 years, and who then decided to come to NDOC, that 10 year employee would "bump" an NDOC employee who had worked for NDOC for 9 years from his or her position, even though the 10 year employee might not have had peace office standard training when they came to NDOC.

Mr. Lennon argued that this change would affect all NDOC employees and the way they bid for posts and annual leave.

Member DuPree stated in substance that, due to the apparent disparity in relation to the bidding process that occurred at NDOC, Mr. Lennon's grievance needed to be moved to a hearing.

Member Thompson seconded Member DuPree's motion.

Member Laney stated in substance that while she was sympathetic to the fact that NDOC employees were impacted by the change in the seniority list, when looking at Mr. Lennon's grievance there was no injustice that could be reversed, and that Mr. Lennon had received the shift he had requested, and that in a former grievance, Grievance No. 2327 by Joshua Bacon (NDOC Exhibit F), it was argued that moot points were not grievable, and that the Committee was unable to provide Mr. Lennon's requested remedy.

Member Thompson disagreed with Member Laney, and felt that Mr. Lennon's grievance should be moved forward, and that even though the Committee might be unable to grant Mr. Lennon's grievance the Committee was still an advisory board to the Governor, and because the Committee was hearing similar grievances so often maybe the Committee needed to make an advisement to the Governor concerning the hearing of NDOC shift requests.

Member Laney further stated in substance that she did not disagree that an advisement to NDOC could be made concerning the change in the shift bid process, but that this was not really the matter at hand.

Mr. Lennon stated in substance that his requested remedy in his grievance dated from November 2018, and that he realized there was nothing the Committee could do at present, and that he was not asking NDOC for a rebid, and that the only thing he wanted was for NDOC to take some responsibility in the matter and that the Committee put something on paper that said NDOC administration could no longer break its own rules and rewrite them when they felt like it.

Member Bauer asked for clarification of the contents of a letter to the Governor recommending a climate and culture study of NDOC, which Chair Puglisi provided.

Chair Puglisi also stated in substance that it had been noted several times that there was no remedy which the Committee could offer for Mr. Lennon's grievance, and that moving the shift bid to next year might not be feasible, and that sometimes an agency had to react to business while it was evolving, and in this case the change in AR 301 was because NDOC believed it was violating the regulation concerning seniority, and so it modified AR 301 accordingly.

Chair Puglisi further stated in substance that he did not believe the Committee could grant relief for Mr. Lennon's grievance, as it was outside of the Committee's jurisdiction to tell an agency what to do, as

the Committee was limited to making sure NDOC did not violate any statute, law or regulation. Because the seniority date seemed to be the crux of Mr. Lennon's grievance, Chair Puglisi noted, if the Committee were to do anything other than what had already been done it would cause a violation of statute.

Member Bauer stated in substance that she felt the Committee's authority was broader than just adjusting grievances, the Committee's authority was also to advise the Governor's Office and the Personnel Commission, but further stated that there was no remedy that the Committee could offer Mr. Lennon, so that moving Mr. Lennon's grievance to a full hearing would not be fruitful.

Member DuPree asked Mr. Lennon if he felt like he had been heard by the Committee, and Mr. Lennon stated "yes," after which Member DuPree withdrew his motion to move Mr. Lennon's grievance to a full hearing, and Member Thompson withdrew her second of Member DuPree's motion.

Member Laney motioned that the Committee grant NDOC's motion to dismiss Mr. Lennon's grievance based on a lack of jurisdiction; Member Laney's motion was seconded by Member Bauer.

MOTION: Move to grant agency motion to dismiss based on lack of jurisdiction
BY: Member Laney
SECOND: Member Bauer
VOTE: The vote was unanimous in favor of the motion.

8. Discussion and possible action related to Grievance #5933 John Jermyn, Department of Corrections – Action Item

Chair Puglisi asked if there were any motions to consider for grievance #5933.

There were none.

Christina Leathers, Human Resources Officer ("Ms. Leathers") and Deputy Director Kim Thomas ("DD Thomas") represented NDOC. Mr. Jermyn was present in proper person.

Chair Puglisi stated there were three stated witnesses, but only two were present: Jackson Hardy and Perry Russell ("Warden Russell").

Chair Puglisi swore in the witnesses.

Chair Puglisi asked if there were any objections to the packets submitted as part of the record.

There were none.

Mr. Jermyn began his opening statement.

Mr. Jermyn stated he had been with the Department of Corrections for over twenty-two years as a correctional officer, had written operational procedures and assisted Warden Greg Smith and Lieutenant Travis Roberts with 12-hour shift bid at Nevada State Prison and Warm Springs Correctional Center (WSCC).

Mr. Jermyn stated the reason for his grievance was the NDOC failed to meet the specified requirements of AR 301 for the shift bid process.

Ms. Leathers began her opening statement.

Ms. Leathers stated this was not the first grievance seen before the EMC and through discussions with the EMC Coordinator and as stated by Co-Vice-Chair Bauer on an annual basis, NDOC finds themselves, after the shift bid, with approximately 70 percent of the EMC's grievances relating to the shift bid.

Ms. Leathers stated that as times change, NDOC has to adjust their situations and scenarios to be effective.

Ms. Leathers stated NDOC felt it was important to update AR 301 although the time was limited, for consistency statewide as previously testified to, there have been inconsistencies by each institution across the state for many years.

Ms. Leathers stated while NDOC understands Correctional Officer Jermyn felt there was an injustice done, the revisions to the AR, while untimely, were done for consistency and to ensure they could proceed in moving forward in reviewing the shift bid process and to ensure the shift bid was effective and efficient.

Ms. Leathers stated part of the change that specifically occurred at Warm Springs had nothing to do with the current leadership at NDOC, that the mandate came from the Executive Budget Office and the legislation was to revise the shifts as they had been done in the past.

Ms. Leathers stated through testimony from Warden Russell the Committee would hear part of that discussion was rather than eliminate the 12-hour shifts altogether, that Warm Springs would be the test institution to try the hybrid of 8, 10 and 12's (hour shifts) which is currently in place.

Chair Puglisi stated Mr. Jermyn would present his case.

Mr. Jermyn stated he would read a statement from a lawsuit filed by SNEA and AFSCME against the NDOC in December of 2002 (Exhibit

13, pg. 7).

Mr. Jermyn read:

“All staff are reminded that Administrative Regulations, directives, Nevada administrative codes, State and Federal law apply to all staff regardless of rank, assignment or division.”

Mr. Jermyn stated he would explain how this statement was applicable to his grievance.

Mr. Jermyn stated he would like to address the multiple violations of AR 301 and Operational Procedure (OP) 301.

Grievance Violation #1: The NDOC failed to meet the time requirements as specified in AR 301. The WSCC shift bid was posted 22 days past the required due date (Exhibit 8, pg. 4, #3, line B).

Grievance Violation #2: WSCC seniority list was changed and posted 4 days prior to the shift bid. This is 22 days past the required date as stated in AR 301 (Exhibit 8, pg. 4, #3, line H).

Grievance Violation #3: The WSCC post chart was not posted until September 5, 2018 (Exhibit 3). This makes the post chart 36 days past the due date as required in OP 301 (Exhibit 12, pg. 2, line 4).

Mr. Jermyn stated the missed timelines were acknowledged by the administration in his grievance, but no action was taken.

Grievance Violation #4: Warden Russell violated AR 301 because he neglected to ensure compliance of AR 301 and to conduct the shift bid in accordance with the requirements of this regulation. (Exhibit 8, pg. 1, paragraph responsibility).

Mr. Jermyn stated AW Schreckengost violated AR 301 and OP 301 by delegating the shift bid to Lt. Hardy (Exhibit 8, pg. 1, paragraph responsibility and Exhibit #12, pg. 1 paragraph responsibility).

Mr. Jermyn stated they both specifically state the shift bid cannot be delegated to an official lower than the Associate Warden.

Mr. Jermyn stated Lt. Hardy violated AR 301 and OP 301 because he conducted the shift bid and he authored all the shift bid memos.

Mr. Jermyn stated Lt. Hardy stated he also took responsibility for the shift bid in error (Exhibit #3, #4, #5 and #6).

Mr. Jermyn stated he would like to address the NDOC violations of State law.

Mr. Jermyn cited NRS 209.131, sections #4, #7 and #8.

Chair Puglisi requested Mr. Jermyn if he could cite the exhibit first so the Committee could follow along.

Mr. Jermyn agreed and stated the above was Exhibit #2, pg. 1.

Mr. Jermyn stated the NDOC has made the perimeter position a pull position.

Mr. Jermyn stated there was a security issue in April 2019 that was still under review or investigation.

Mr. Jermyn stated he described this scenario as a possible security threat to his grievance on September 6, 2018 and stated this was in Exhibit 1, pg. 1 of his grievance.

Mr. Jermyn stated this was the reason why the perimeter position should not be used as a pull position.

Mr. Jermyn stated the second violation also NRS 209.131 sections #1 and #6 was the NDOC administration had changed AR 301 twice since February 8, 2017 without the Prison Board of Commissioners approval.

Mr. Jermyn stated these changes included the disclaimer the NDOC reserves the right to modify the shift bid process as needed to ensure the safety and security of the facility and critical labor areas and during times of critical labor shortages.

Mr. Jermyn stated the third violation was based on NRS 209.161 section #3.

Mr. Jermyn stated the Warden has not enforced the regulation as required for AR 301.

Mr. Jermyn stated the fourth violation was based on multiple NRS's and could be found on Exhibit #2, pg. 3.

Mr. Jermyn cited NRS 209.101 and NRS 284.020.

Mr. Jermyn stated NDOC had repeatedly misrepresented NRS 284.020 in many grievance responses.

Mr. Jermyn stated AW Schreckengost manipulated the wording of NRS 284.020 in his grievance response and misrepresented the NDOC Director as the head of the Department.

Mr. Jermyn stated NRS 209.101 clearly states the Prison Board of Commissioners is the head of NDOC, not the NDOC Director, nor is the

Director an elected official.

Mr. Jermyn stated the fifth violation was based on NRS 209.111 section #3.

Mr. Jermyn stated the NDOC administration has prescribed its own regulations without the approval of their Prison Board of Commissioners review or approval.

Mr. Jermyn stated the NDOC was unlike other Nevada State agencies because it is Constitutionally regulated and managed by the Prison Board of Commissioners.

Mr. Jermyn stated that summarized his issues with the way the shift bid was done and the violations NDOC had made.

Mr. Jermyn stated there are rules and laws that they have to abide by and if their Department is not going to follow them, there is an issue.

Mr. Jermyn stated if they were going to be held accountable, they need to hold the Department accountable.

Ms. Leathers called her first witness, Lt. Jackson Hardy.

Ms. Leathers asked Lt. Hardy where he currently works and his current position, and he stated WSCC and his position is Administrative Lieutenant.

Ms. Leathers asked Lt. Hardy what his job duties are.

Lt. Hardy stated he has the supervisory responsibility for uniformed staff, monitoring inmates, day to day shift and security operations, assists shift commanders with performance and execution of assigned duties, review of shift logs, employee evaluations and appraisals.

Lt. Hardy stated he assess training needs and recommends appropriate training programs and development and makes recommendations to the Associate Warden.

Lt. Hardy stated he inspects the institution for security, safety to ensure policy and procedure are followed and the safety and sanitary conditions of the institution are maintained.

Lt. Hardy stated he reviews inmate movement and transportation requests to determine the level of security required.

Lt. Hardy stated he assists the Associate Warden with institutional procedures, post orders and staff and equipment projection needs.

Lt. Hardy stated he ensures adequate staffing for the institution and

assists in the development of the master roster.

Lt. Hardy stated he conducts the annual shift bidding, making the announcements, distributing information to the staff, maintains the staff seniority list and advise the Warden on current staff and exempt positions.

Lt. Hardy stated this was all under the Warden and Associate Warden's advisement.

Lt. Hardy stated he assigned new employees of vacant positions and reports vacant positions to the Warden and Human Resources.

Ms. Leathers asked what role Lt. Hardy played in implementing NDOC administrative regulations.

Lt. Hardy stated he reviews the operational procedures, submits recommended changes and forwards those to the Associate Warden.

Ms. Leathers asked in Lt. Hardy's time at NDOC, how many shift bid processes he had seen.

Lt. Hardy stated he had been a part of the shift bid process for the last 5 years and had been familiar with shift bidding since it was implemented since approximately 2004.

Ms. Leathers asked Lt. Hardy to explain the major changes to the shift bid process at WSCC.

Lt. Hardy stated the first major change was the institution went from a majority 4-hour shift roster to a combination of 8's, 10's and 12's (hour shifts).

Lt. Hardy stated the second change was at the direction of the administration, the policy regarding how seniority was calculated.

Ms. Leathers asked Lt. Hardy if he knew why the first change was made.

Lt. Hardy stated they are legislatively approved for 8-hour shifts and they are given a budget and a set number of officers and those officers are spread amongst a certain number of shifts.

Lt. Hardy stated the administration had said in the past that communication between 12-hour shifts was not as efficient as it was with 8-hour shifts.

Lt. Hardy stated because you have two halves of the week, the A team and the B team, those supervisors do not have the ability to talk to one another so you have one half of the week doing one thing and the other half of the week operating differently.

Lt. Hardy stated the idea behind it was they would modify it to 8's, 10's and 12's to give officers more options for their personal lives, where they could chose shifts based off of seniority and it would allow for more communication in the institution.

Lt. Hardy stated the officers would be spread out and there are 8-hour supervisor shifts, 8-hour custody positions and those officers are able to talk to one another.

Ms. Leathers stated in Officer Jermyn's grievance, he indicated the change of shifts has placed officers at risk and asked Lt. Hardy to define risk as it applied to the inmates at WSCC.

Lt. Hardy stated the risk factor assessment is given to the inmates based off their sentence structure regarding what they are in prison for, how long they served in prison, if they had been a criminal in the past, if they have a violent history and all those factor into a score and based on that score, they make the determination as to which institution they are best suited for.

Lt. Hardy stated Mr. Jermyn's specific statement they have inmates serving life in prison was correct but those inmates have proven themselves in the system to be less of a threat following what they have needed to do to lower their risk factor score to be eligible to come to WSCC.

Ms. Leathers asked Lt. Hardy to clarify the security level at WSCC.

Lt. Hardy stated WSCC is a medium security prison.

Ms. Leathers stated she had no other questions.

Mr. Jermyn asked Lt. Hardy how many life sentence inmates are housed at WSCC.

Lt. Hardy stated he did not know the number but there were several.

Mr. Jermyn stated there were 68 life sentence inmates and no tower positions on the perimeter.

Mr. Jermyn stated the perimeter positions have not been utilized and had been classified as a pull position and that was not a good idea.

Mr. Jermyn stated with no perimeter positions on the North side, if they pull the positions you have nothing on that perimeter.

Mr. Jermyn stated with life sentence inmates, he would not want to have that risk.

Lt. Hardy stated the definition of a pull position is a position a supervisor

can pull from to complete certain tasks and be used for emergency response situations.

Lt. Hardy stated these positions must be staffed and can only be pulled for a maximum of 4 hours.

Lt. Hardy stated in the event they would do a pull position, they have in OP 326, mandatory and emergency staffing levels for day shift are set at 11.

Lt. Hardy stated in order to get to mandatory emergency staffing levels where the perimeter would be pulled from, they would have to meet certain parameters.

Lt. Hardy stated when they pull a position or shut a position down, they reduce services to inmates, they reduce the amount of staffing to accommodate that need.

Lt. Hardy stated in OP 326 the perimeter is the last position to be shut down because it had been identified as a needed position.

Mr. Jermyn stated he understood the thought process behind that, but this was the first year of changing that position to a pull position.

Mr. Jermyn stated security was not something he took lightly; he is a third-generation correctional officer and he had grown up in this environment.

Mr. Jermyn stated that position should not be a pull position when it is used to guard the public and the institution.

Chair Puglisi asked for clarification on the position and Mr. Jermyn stated it was 'perimeter patrol'.

Mr. Jermyn stated the perimeter patrol position is only manned from 6:00 am to 6:00 pm.

Mr. Jermyn stated if the position had been like this since it was legislatively approved, if the position was such a threat, it would be manned 24 hours a day.

Mr. Jermyn stated the department has turned into a security disaster, that they had taken away the weaponry that could stop an escape on the northern perimeter.

Mr. Jermyn stated the post position used to have a shotgun and they should be able to protect that northern perimeter, but they took that away.

Chair Puglisi stated they were there to discuss shift bid but were now discussing safety and posts and need to focus on the alleged injustice as

it relates to the shift bidding/hybrid shifts.

Mr. Jermyn stated that was part of the grievance and was one of the many issues he addressed.

Mr. Jermyn stated it had to do with the shift bid because they changed so much and created pull positions that were never pull positions, they changed hours, they changed schedules.

Member DuPree stated it had been said in a previous grievance today, it was stated they are 6 months into the new hybrid schedule.

Mr. DuPree asked Mr. Jermyn, if NDOC had made the alleged violations in his grievance, what would be the remedy.

Mr. Jermyn stated the only remedy would be to follow the posted rules and regulations, and to go back to the 12 hours shifts next year.

Mr. Jermyn stated trying to re-bid would be chaos.

Mr. Jermyn stated everyone has their time in, and that he received a 12-hour shift and all of his annual leave, however, he was number 2 on the seniority list and that helped dramatically.

Chair Puglisi asked Mr. Jermyn to clarify that he received the shift that he wanted and stated that a grievance was to address an injustice strictly for him.

Chair Puglisi stated if Mr. Jermyn was representing a group of people, the grievance process would not be an appropriate venue.

Mr. Jermyn stated he did receive the shift he bid on and stated the grievance was filed before the shift bid.

Mr. Jermyn stated the grievance had been in process for six months, and even though he got the shift he wanted, he had filed the grievance before that happened.

Mr. Jermyn stated it was after the shift bid was posted that he filed the grievance because the agency did not meet the deadlines, the AR's or the law.

Member DuPree stated AR 301 had specific penalties for if officers did not comply with the shift bid rules and asked Lt. Hardy if there were the same penalties if the agency did not comply.

Lt. Hardy stated Mr. Jermyn was correct, the agency followed AR 301 for years.

Lt. Hardy stated the way the procedure worked was the agency

maintained the seniority list year-round and the change as far as the hybrid shift was, they posted it, but it was at the direction of the Administration.

Lt. Hardy stated they were waiting for guidance from the Administration as far as the type of shifts they wanted.

Lt. Hardy stated there were three different proposals and they had drafted 3 bids; one for 8-hour shifts, one for the hybrid they were on and one similar to last year with the majority being 12-hour shifts.

Lt. Hardy stated they were on standby waiting for Administrative guidance as far as which one they wanted to follow.

Lt. Hardy stated as soon as they received direction, it was posted, the email went out that day stating the bid and the process.

Lt. Hardy stated as the seniority list was posted year-round that was never an issue, it was always up to date.

Member DuPree asked if this was a trial program or if the hybrid shifts were going to continue.

Ms. Leathers stated it was a pilot program at WSCC per the Legislature and the Executive Budget office.

Ms. Leathers stated as Lt. Hardy had testified to earlier, the Legislatively approved post charts were for 8 hours and as there was so much chaos, and as a matter of record, Ms. Leathers herself asked why there was so much inconsistency across every institution.

Ms. Leathers stated in an effort to bring consistency and clarity, and to make sure there was buy in from DHRM and the Attorney General's office, that was what ultimately caused the delays.

Member Novotny asked if Ms. Leathers knew how long the pilot program would go.

Ms. Leathers stated the shift bid was good for the entire calendar year and the AR would be reviewed beginning July 1, to ensure adequate time to address officers' concerns with seniority as well as to ensure they are in sync with the timing of the process for 2020.

Ms. Leathers stated additionally to adjust the bid based on the legislative and budget sessions as well as the potential for collective bargaining, which NDOC was looking at having its own collective bargaining agreements should that be approved.

Member DuPree stated he could not direct the agency to do anything but would recommend when the agency reviewed the AR, they may want to

bring Mr. Jermyn into the discussion as he has good ideas regarding the process.

Chair Puglisi stated he asked if Mr. Jermyn had anymore questions for Lt. Hardy, but the discussion had navigated away from the original question.

Chair Puglisi asked again if Mr. Jermyn had any other questions.

Mr. Jermyn stated yes and asked Lt. Hardy if it was correct that OP 301 and AR 301 should not be delegated to anyone lower than an Associate Warden.

Lt. Hardy stated the Associate Warden oversees everything he does, and it doesn't say it can't be delegated because he was not the one operating the shift bid.

Lt. Hardy stated the AR did not state he could not put together for submission, for the Associate Warden's or the Warden's approval.

Mr. Jermyn stated Lt. Hardy had stated he conducted the shift bid.

Lt. Hardy stated he did.

Mr. Jermyn stated that was in violation of AR 301 and OP 301 as Lt. Hardy was doing the shift bid and it specifically stated otherwise.

Lt. Hardy stated that would depend on what it meant to conduct, he was in the room when officers' bid and was in the room every time for the last years along with Travis Roberts AW Schreckengost and others.

Mr. Jermyn asked if he was there the whole shift bid and Lt. Hardy stated 'yes'.

Mr. Jermyn stated his point was, the rules are the rules for a reason, and he is a firm believer in rules.

Mr. Jermyn stated that was why he was trying to hold the agency accountable, that everybody has to follow the rules and that was why he pursued the grievance.

Chair Puglisi asked what direction the conversation was going because if this was about holding NDOC accountable, he did not feel the Committee had the jurisdiction to do that.

Chair Puglisi stated the Committee needed to focus on any injustice that was personally incurred by Mr. Jermyn.

Chair Puglisi stated the Committee did not have the authority to impose discipline on and one person.

Chair Puglisi stated they were having conversations that should have taken place prior to the hearing to try to resolve grievances at a lower level.

Mr. Jermyn stated he agreed with Chair Puglisi, but he stated before, the grievance was filed six months ago and they were way past it, but the grievance could have been resolved and the steps weren't taken to approach him for resolution.

Chair Puglisi stated at the end of the motion to dismiss hearing before, he reminded the parties a resolution conference could be requested at any point in the process and felt that did not happen for Mr. Jermyn's grievance.

EMC Coordinator, Nora Johnson stated the resolution conference process could only be requested once a grievance has been moved to step 4, however, a mediation could be requested by either party at steps, 1, 2 or 3 so that the grievance can be resolved at the lowest level possible.

Chair Puglisi stated Ms. Leathers had the opportunity to redirect.

Ms. Leathers stated in an effort to not continue to have the same conversation, she would consider not calling her next witness as she did not feel there would be added value in going over the same information.

Ms. Leathers stated she felt the Committee had a good grasp of the issue and the agency did offer all employees of NDOC the opportunity to provide feedback to the AR revisions.

Ms. Leathers stated she would like to note as times continue to change, the agency should be given the ability to change and update policies and procedures to be consistent and effective.

Ms. Leathers asked if she could request the Committee dismiss the grievance.

Chair Puglisi stated a motion to dismiss could be presented at any time during the hearing.

Ms. Leathers stated NDOC would like to request a motion to dismiss the grievance based on the previous dismissal, that Mr. Jermyn did get his requested shift based on seniority and that at this time, there was no injustice that Mr. Jermyn incurred.

Chair Puglisi called a 10 minute recess to confer with the EMC DAG at 3:07 pm.

Chair Puglisi called the meeting to order at 3:17 pm.

Chair Puglisi stated the Committee had heard a motion to dismiss on

behalf of Ms. Leathers and NDOC based on the grievance being moot, there was no injustice and the Committee did not have jurisdiction to grant relief.

Ms. Leathers stated that was correct.

Chair Puglisi stated as the Committee had heard the motion to dismiss, Mr. Jermyn now had the opportunity to rebut the motion to dismiss and once finished, the Committee would go into deliberations.

Mr. Jermyn stated he did not have a rebuttal; the grievance was filed six months ago the issue had already gone through.

Mr. Jermyn stated there was not much that could be done at this point and his biggest concern was the agency needed to follow the rules.

Mr. Jermyn stated he realized the Committee did not have the authority to enforce that issue.

Chair Puglisi stated he felt confident that now the regulations had changed, aside from the pilot hybrid program, that the next shift bid would be more consistent.

Chair Puglisi opened the Committee for discussion on the motion to dismiss.

Member Laney asked if the Prison Board of Commissioners was the appropriate venue for staff to grieve these types of concerns outside of the State grievance process and if not, what would be the appropriate process.

Ms. Leathers stated she would defer that question to Deputy Director (DD) Thomas because she was not involved with the Board.

DD Thomas stated the Board was comprised of the Governor, the Secretary of State and the Attorney General.

DD Thomas stated within the grievance there was a contention that the AR at issue was not valid in it's altered state and that was not accurate.

DD Thomas stated what the agency does with AR's, specifically AR 301, was they draft the regulation, they distribute the draft internally to everyone in the agency and they request input from anyone who has feedback and the feedback in given a timeline.

DD Thomas stated the agency takes those recommendations and they are reviewed by the executive committee; changes are made that seem reasonable and the employees have that option for input.

DD Thomas stated the agency can then implement the regulation on a

temporary basis subject to it being presented to the Prison Board for approval.

DD Thomas stated it was not a matter of the regulation not being valid, it is a temporary regulation.

DD Thomas stated AR 301 will go to the Board and once presented, there will be an opportunity for public comment.

Chair Puglisi asked how often the Board of Prisons meet and what the posting requirements are.

DD Thomas stated they meet quarterly, and the meetings are posted on the NDOC intranet, NDOC internet.

Member Laney stated she understood there was a form for employees to give feedback but wondered if the employees had the opportunity to address the Board if they still disagreed with the revisions.

Ms. Leathers stated once the agency puts out the communication to revise an AR, staff is given the opportunity and deadlines for feedback.

Ms. Leathers stated meetings are scheduled and Subject Matter Experts (SME) are available for clarification to discuss why the changes are being made.

Ms. Leathers stated specifically to AR 301, the agency was up against a time clock and had to do the shift bid because they go into effect the first full pay period of the year and would also impact annual leave.

DD Thomas stated he does not manage the prisons themselves, that was the responsibility of DD Wickham, but he does manage and work closely with HR and the regulation process.

DD Thomas stated procedurally, there is always the opportunity for employees who disagree with the interpretation or application of a temporary regulation to request a mediation before step 4 where they can have an independent party look at the regulation and process.

DD Thomas stated there were several meaningful ways for employees to be engaged in the regulations process.

Member Bauer stated since the Committee was deliberating on the motion to dismiss, she would go on record as supporting a motion to dismiss.

Member Bauer stated it was not that she didn't sympathize with the grievant, however, it should be made clear in this case, it isn't enough to make an open-door policy.

Member Bauer stated when an employee files a grievance, that is no small task especially if the grievant is a longtime State employee.

Member Bauer stated the employer needs to make a point of reaching out to the grievant at each step of the grievance process.

Member Bauer stated it did sound like there were multiple forums for the employee to be heard, but when an employee files a grievance, and puts their name in NEATS for posterity, that is a big enough issue that the employer needs to take the time to hear that employee.

Member Bauer stated at this time, she would be in favor of approving the motion to dismiss.

DD Thomas stated he did not disagree with Member Bauer, but it was interesting that the previous night at shift change, around 6:00 pm, he was speaking to some of the officers and asked how shift bid went.

DD Thomas stated they had a 20-minute conversation regarding shift bid and expressed appreciation for the officers being candid and sharing information that he would need to make more appropriate decisions.

DD Thomas stated if the agency was not sensitive to family needs through the shift bidding process, he would look into that.

Member DuPree asked Mr. Jermyn if he felt like he had been heard.

Mr. Jermyn stated he felt like he had and was unsure if anything was going to change but was glad the issue was now a matter of record.

Lt. Hardy stated some of the ideas for the shift bid were his ideas as approved through the Warden and his office is located in an area where everyone has access.

Lt. Hardy stated employees are welcome to express and submit input to any matter going on.

Chair Puglisi asked if anyone was prepared to make a motion.

Member Laney motioned to grant the motion to dismiss grievance # 5933 based on the EMC cannot provide relief as requested by the grievant and lacks jurisdiction.

Member Thompson seconded the motion.

Chair Puglisi asked if there was any discussion on the motion, there was none.

MOTION: Move to grant the motion to dismiss grievance # 5933 based on the EMC cannot provide relief as requested by the grievant and lacks jurisdiction.
BY: Member Laney
SECOND: Member Thompson
VOTE: The vote was unanimous in favor of the motion.

9. Public Comment

There were no comments in the North or in the South.

10. Adjournment

Chair Puglisi adjourned the meeting at approximately 3:50 pm.