



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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**Meeting Minutes of the Employee-Management Committee
January 7, 2014**

Held at the Blasdel Building at 209 E. Musser Street, in Room 105, Carson City, NV, and the Grant Sawyer Building, 555 E. Washington Avenue, Room 1400, Las Vegas, NV via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	X
Ms. Mandy Payette–Co-Vice-Chair	X
Ms. Bonnie Long	
Ms. Claudia Stieber	X
Ms. Allison Wall	X
Ms. Michelle Weyland	X
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	X
Ms. Donya Deleon	X
Mr. Tracy DuPree	X
Mr. David Flickinger	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X

Staff Present:

Ms. Carrie Parker, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator

CALL TO ORDER

Mark Evans: It's time where I can legally start the meeting. So I will call the meeting to order at 2:30 p.m. on Tuesday, January 7, 2014. We are meeting in the Blasdel Building at 209 E. Musser Street, in Room 105, Carson City, with video conferencing to the Grant

Sawyer Building, 555 E. Washington Avenue, Room 1400, in Las Vegas, Nevada. The first item on the Agenda is public comment. What it states is "No vote or action may be taken upon a matter raised during public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. Comments will be limited to five minutes per person, and persons making comment will be asked to begin by stating their name for the record."

In addition to this public comment portion, I'll also take public comment after the main Agenda items. Probably not so much after the adoption of the Agenda, but those items that we will be discussing. I will open the floor to public comment for each of those actions. And then we also have public comment at the end of the meeting. So we will use this chair for public comment. And the reason we're going to do that is because we do want to be able to record any public comment. So if anybody has any public comment in Carson City, at this point, feel free to approach the chair. Okay. Nobody in Carson. Nobody in Las Vegas.

Mark Evans: Just a little overview of the meeting and to kind of give you the history of why we had the meeting. And many of you from personnel positions have heard this drill before. But this is the first time we've had our committee together to discuss it. So the history of the EMC is the Chair, or if the Chair was conflicted, the Co-Chair, would discuss areas such as: Did we have jurisdiction over a case? Did it have a previously heard situation that was very similar to a previous case that had almost the same facts? Then the Chair would look at it and say that that was previously heard. You know, again, they would talk about jurisdiction. They might decide if it was timely.

But there were a whole lot of issues that the Chairman, with the advisement of the attorney, would decide if they had jurisdiction or not, and those cases would not go forward to the EMC. The Chairman or the Co-Chair would make that decision. And that seemed to be an expedient way to get things done. It seemed to make a lot of sense to everybody. Things were moving along just fine. And then we had a situation with a judicial review, where what happened is we had a case that the Chair looked at. It looked very similar to another case. And the Chair ruled that it was previously heard. That case then went to a judicial review. The judge viewed that decision as a full-on decision, which I don't know if that was necessarily the intent of that kind of decision making, but that's how he dealt with it. And it came back to the EMC to be heard again.

So based on that what we realized is if they're going to start treating decisions we make about jurisdiction, decisions that we make about previously heard, all those issues as full decisions, then that decision can't be made by one person. It needs to be made by the Committee. So what we had decided to do, between the Co-Chairs, myself, our attorney, and input from DHRM staff is what we would do is we would just schedule every case we got for a hearing.

Now, however, we realized that the agencies would look at some of those cases and say, well, you don't have jurisdiction over that; that looks like it's previously heard. And that they would have some objection to those being heard. So at that point we decided we had two options. We could just go ahead and hear everything, and let the agency come to the hearing, prepared fully to present that hearing. And maybe they've done a lot of work on their packets. Maybe the employee's done a lot of work on their packets. And we could decide, you know what, we don't have jurisdiction or this is previously heard or this isn't timely. We could dismiss the case.

And we felt like that would put a lot of work on both the employees and the agencies. So our decision was if we got a motion to dismiss from an agency, based on they didn't think we had jurisdiction or they thought it wasn't timely or they thought it was previously heard, then what we would do is we would schedule that as soon as we can -- although there's certain regulations that we have to follow, although we're working on a waiver so that we can speed those up -- and just hear the motion to dismiss.

And then if we decided to dismiss the case, then everybody wouldn't have to run and do all the work. So it's a little cumbersome, but if the courts feel like these are final decisions, we felt like we had to do that in order to give them a full decision and also meet the Open Meeting Law. So as we discussed this we send out an email explaining this to the personnel liaisons. Also sent it out to the Committee, but this is the first time the Committee has had a chance to discuss this. So I felt like it was right to get the Committee here, discuss this, and even see if they have other thoughts, if they have other ideas. At this point it's pretty open. But, on the other hand, we are finding that we're starting to get backed up with our cases and we want to start moving these along.

So the initial purpose of this meeting was to discuss that. But as we started discussing this issue then we had Committee members saying, well, where are our procedures? Do we have any written procedures? What kind of written procedures do we have? And we don't really have written procedures. We have what's in the regulations. We have the oral tradition of what's been done in the past. And the oral tradition is only as good as the person that is here that has the oral tradition, and so a lot of that was gone away. I mean, we're really a very new Committee and staff is new as well.

So we decided to put an item on the Agenda regarding procedure; if we wanted to go forward with some; if we wanted to develop some. It's possible we could talk about some today and adopt some today. It's possible that we could put together a subgroup and have them research what other states or public entities have as procedure. There are certainly options there for what we can do. And I know from my experience, when I worked at the Division of Human Resource Management, we put together a procedure manual for the hearing officers. And we thought we were just brilliant and we did a lot of research on it. And now those lawyers turn around and quote that against you.

So I think you have to be aware that as we develop procedures, that's good. But it also has room for people to question if you're following your procedures.

Tracy DuPree: We have room to get tied up on our own methods, if we're not careful.

Mark Evans: So that was the second item. That was second, Item 6 that we added. And then we decided, as we discussed, you know, we're not sure how we feel about judicial review anyway. We're not even sure that we should be subject to that. We're not a bunch of lawyers. I mean, we're basically employees that hear people's issues, make the best decision we can based on what we know. But we're not like hearing officers who are licensed lawyers. We're basically -- I see us as a group of peers that people come to if they can't work it out with their agency.

So then the other thing we decided to add to the Agenda was a discussion of, if we want to look at a bill draft request that would specifically exclude us from judicial review. And there are other areas that are excluded from that. And we have had decisions from the courts, some saying that we are not subject to judicial review; others saying that we are. And the case that has caused us to change how we're doing motions to dismiss, we're not saying we necessarily agreed with that, but we felt like we had to honor what the judge said. We didn't want to be in contempt. So we've gone ahead to kind of protect ourselves, thinking, okay, we can have a meeting with the Committee, discuss what we want to do and then go from there.

ADOPTION OF THE AGENDA

Mark Evans: Even though we have this written agenda, we don't have an unspoken agenda. We're here for ideas. We're here for suggestions. I just thought it was important to get the Committee together to talk about what we're going to do with motions to dismiss. We added things from there because it was great to have the Committee together. And then we started promoting it to other people so that you could offer any suggestions you have. So that's Committee introduction and meeting overview and update. So now I'd like to ask for the adoption of the Agenda, where we will discuss Items 5, 6, and 7, so...

MOTION: Move to approve the adoption of the agenda.
BY: Tracy DuPree
SECOND: Mandy Payette
VOTE: The vote was unanimous in favor of the motion

Mark Evans: So the first item, written with legal help, says, "Discussion and possible adoption of procedures, including but not limited to those related to motions to dismiss, jurisdictional issues, answering a request for Employee Management Committee consideration based on a previous decision, and hearings related to these issues."

So, specifically, what we wanted to address under this was just how we would handle those motions to dismiss. And, again, the idea was to go ahead and schedule those, send out the scheduling letter. If the agency submits a motion to dismiss, then we will send a waiver asking for -- to be allowed to spend less time to -- because normally we have to give them 21 days before we can put it on an agenda -- to try to speed that up. Then hear those probably at the first of the meeting. Give each side no more than 15 minutes. We're going to have those motions to dismiss in front of us.

I, personally, don't even think it is necessary for both sides to even appear if we have the motion to dismiss. So if somebody didn't show up -- if an employee didn't respond to the motion to dismiss, I think we could still talk about it and decide if we had jurisdiction or whatever the situation was over the case. I don't think that would necessarily say, okay, we're not going to hear this grievance. But that's my thought. I'd like to open it up to the Committee and see what they have to say.

Tracy DuPree: Mark, if all we're trying to figure out is if we had jurisdiction over the next set of cases, what would be the harm in bringing it -- get the next few cases before each Committee meeting, kind of like at the end of it, this is what's coming before, and does the Committee as a whole think we have jurisdiction? And then we could look at all of them really quickly and make a quick decision that's done by the entire Committee, and then move

on without having to reinvent the wheel. We just decide as a group whether, okay, we hear that or not and then move on. We're not going to have...

Mark Evans: I'm looking at Carrie.

Carrie Parker: Deputy Attorney General Carrie Parker, for the record. So, if I'm understanding correctly, you would want to have whoever's sitting on the Committee for that meeting review the grievances. So each member would have a copy of the grievance and review as a group. So you won't have the benefit of any motions, because sometimes the motions to dismiss will bring up something that might not have been in the grievance, like the timeliness or maybe they've already worked this out previously or this was grieved before. Sometimes there are things that the two sides don't put in the grievance.

Tracy DuPree: We may not know on first reading the grievance. Okay.

Carrie Parker: That could possibly work for most of them. And then -- so you'd have to decide. So if we decide to go forward with grievance "A" and then after the Agency sees it and says, wait a minute, this employee submitted this too late. Then are you going to allow them to do a motion to dismiss after you've already had that initial meeting when you said we think we do have jurisdiction? I mean, I'm not saying you couldn't. Through the old process when the Chair did it or the Vice-Chair, there were still motions to dismiss because the Chair or the Vice-Chair may have missed something or maybe it wasn't in the grievance paperwork and the agency would bring that forward.

Tracy DuPree: No matter what we do, there's going to be areas where we fraught with peril anyways, so...

Carrie Parker: Well, I think part of it, too, is if we allow it -- because I think we've discussed this before -- if we do it that way, and then we get a motion to dismiss, we still have to have a committee make that decision. So we're still looking at them bringing that again to a Committee to say do we agree with the motion to dismiss?

Mark Evans: Well, and here's the issue as well. If we were sure we were going to have a meeting twice a month that would be timely. But when we get last-minute motions for continuances that we grant, then it could be that we would just be meeting to talk about those pending grievances. So I don't know if that's the best use of our time. I mean, maybe. I don't know.

Carrie Parker: Carrie Parker, for the record. So the regulation says 21 working days' notice before your hearing. Open Meeting Law says if a Board or a public body is going to take administrative action against you, you get 21 days. If a Board's going to consider your moral character or professional competence, you get 21 working days. So if you're going to decide in a hearing whether or not the grievance goes forward, that...

Mark Evans: We would have to give them 21 more...

Carrie Parker: So, you would need 21 working days, because, if you say no, then that's it for their grievance and you've taken administrative action against them.

Tracy DuPree: And then take them, yes.

Carrie Parker: So they're still going to need 21 working days' notice.

Mark Evans: Members in the South, any thoughts?

Sherri Thompson: About how many grievances a month, a year, do we get? Do you know?

Mark Evans: I don't, off the top of my head. I mean, it varies. I mean, you could get 18 grievances in the same month. But, honestly, eight of them could be from the same person and, I mean, I'm not being sarcastic. That's true.

Tracy DuPree: It happens that way.

Mark Evans: That's true. And then we -- or you might get a lump of five, but they're all related to the same thing. So, you know, when you talked about that particular grievance it would be the same thing.

Mandy Payette: It still is five grievances. This is Mandy Payette, for the record. It's still five grievances, unless they allow us to consolidate them to one, and we usually ask that at the meeting, so...

Mark Evans: Yes, so it could be hard to schedule.

Allison Wall: I have a question, for clarification. This is Allison Wall. So you're saying that the only way we would dismiss it is if it was a request from the agency and is that under the assumption that the agency is aware of -- I thought now we kind of dismiss some because the EMC has already heard it.

Mark Evans: Okay. Just to explain. What happened with that case that caused this is it was decided by the Chair that that was very similar to some previous cases. So it was this was previously heard, we're not going to hear it. I'm not sure that when that decision went out, we thought of it as a formal final decision. I think we thought of it more as a letter from the EMC Chairman saying, yes, we've already heard this. We're done. But then when the judge decided to hear it, suddenly, oh, they're treating that as a final decision that is subject to judicial review, according to this judge. So now what we're saying is we don't have the authority -- the Chairman doesn't have that authority to do that anymore. It takes the whole Committee in an open meeting to do that to be legal, according to this judge (inaudible).

Allison Wall: So moving forward, how would an agency know to request to dismiss, based on the fact that we've heard it before?

Mark Evans: They might not. But I think most of them would. But here's the thing, even though they bring up a motion to dismiss, that might not mean that we'd grant it.

Allison Wall: Or they don't ask to dismiss it, and then we see it. Everybody prepares, we see it. Are we able, at that Committee meeting or at that hearing, to say, hey, we've heard this before and we ruled no?

Mark Evans: Sure.

Tracy DuPree: As long as we're together as a whole group, at that point.

Mark Evans: I think so, because...

Mandy Payette: As long as you have a quorum.

Mark Evans:...I don't know with the last case we heard, which was that case that came back to us, that it didn't occur to me, eventually, that, no, it wasn't timely and before I thought it was. But then as I heard what the lawyer had to say, as I heard what the employee had to say, and as I heard Mandy and Stephanie's deliberation, you know, I decided it wasn't timely, in my mind, and before I thought it was. So, you know, there's value. That comes out in the testimony. It comes out in how the employee answers the questions. It comes out in the lawyer's or the representative's legal argument sometimes.

Mandy Payette: And this is Mandy Payette, for the record. And I think we had talked about that, that if they had a motion to dismiss, if we had to make a decision on it, as we did as a quorum, because then we could ask questions to both sides as to, okay, employer, why do you think that there's relevance to dismiss it? And then to the employee, why do you think that it's still -- should move forward. So, you know, I think that testimony helped us in that last one, at least for me, that it wasn't timely.

Mark Evans: Well, it did a lot. It did a lot.

Stephanie Canter: I have a question. In the past, when we've taken a motion to dismiss, even if we've taken it with the full Committee seated, the Chair usually rules on a motion to dismiss. So is that completely changing as well?

Mark Evans: I would think it would have to. Because, again, what this was based on is the Chairman can't be making that decision. Because we even talked about, well, maybe we could have an employee rep and a management rep go through those and make the decision. But we decided -- so that we didn't have to do that, and we decided that wasn't legal. You know, we didn't have a full Committee.

Tracy DuPree: And you still have a full quorum -- you have to have a quorum, I think.

Mandy Payette: So would it be the Chair making the decision or would it be, even if you made the decision, would it then be the quorum has to say they agree or not, in order for it to go through as a vote?

Mark Evans: I think it would have to be a motion by a Committee member and approved by the Committee. Carrie, what do you think?

Carrie Parker: Carrie Parker, for the record. So the EMC is a public body and under the Open Meeting Law for a public body to take action the majority of votes at a meeting where there's a quorum. So that's why we decided that a quorum would have to be present. And also the EMC has a specific statute that says that the EMC may not adjust agreements without an

equal number of employee reps and management reps. So that's why we have to always have to have four at a meeting. We have to have at least four, with two and two.

Mark Evans: So it would just like a regular hearing but shorter.

Claudia Stieber: This is Claudia. Just for clarification, so is the thought that every grievance we get we'd go ahead and schedule, and then in the meantime, between when it gets scheduled and when we hear it, the agency makes a motion to dismiss? The thought is we'll hear that motion to dismiss first and rule on that and then if we rule to not dismiss it, it'll be scheduled for a later -- a subsequent...

Mark Evans: Yes.

Stephanie Canter: So it would kind of be a preliminary hearing essentially, right?

Mark Evans: I would say that's what it looks like, yes.

Claudia Stieber: Only on those that we get something from the agency requesting to dismiss.

Mark Evans: Right. Maybe we wouldn't get a motion to dismiss on every grievance, but I'm not sure I'm hearing that the DAGs are gearing up.

Carrie Parker: And, Stephanie, this is Carrie. The reason for separating it out is so that the agency does not -- and the employee, don't have to bring in all their witnesses and make all their extensive evidence packets in the event that it would be dismissed. They skip that step.

Stephanie Canter: Right. So even if they don't -- so are we going to schedule every single one for a preliminary hearing or are we just going to wait and see which agencies submit a motion to dismiss?

Mark Evans: Only the ones that submitted a motion to dismiss. If they don't submit a motion to dismiss, then we'd go forward and schedule it just as we would. But I think there's...

Mandy Payette: Well, but then I thought we thought about -- then how do we do if we're going to -- so then we would review it then to see if we have relevance for it to be heard, if we've heard it before, if we have jurisdiction over it?

Mark Evans: Okay, so if we didn't have a motion to dismiss (inaudible)?

Mandy Payette: Dismiss from the agency.

Mark Evans: Yes, I think that's what we would do. I mean, I think we would just hear it. And then I think even a Committee member could say...

Mandy Payette: We don't have jurisdiction.

Mark Evans: Yes. I think before we even got into it, technically a Committee member could say I don't think we have jurisdiction over this.

Claudia Stieber: Would timeliness matters fall into that, too, if it wasn't filed timely?

Mark Evans: Sure. I think so.

Claudia Stieber: So we couldn't even cut those off at -- I know how it works now is you guys review -- when I say you, the Chair, one of the Co-Chairs and Carrie review them and decide whether to go forward. If someone's grossly late in turning one in, you would go ahead and schedule those, too?

Mark Evans: Yes, but I'm pretty sure that's going to have a motion to dismiss on that, too.

Mandy Payette: We may see a lot of motions to dismiss moving forward.

Stephanie Canter: I have a question. The agency can still bring a motion to dismiss so at -- if we scheduled a full hearing, though, right?

Mandy Payette: Yes.

Tracy DuPree: Yes.

Mark Evans: I think so.

Mandy Payette: Yes.

Mark Evans: Yes, I think they could do whatever they want.

Mandy Payette: Well, and I think, this is Mandy for the record. I think we've seen that in the past where even they've asked for a motion to dismiss, and the Chair in the past has said, no, we're going to move forward. And then even at the hearing -- and correct me if I'm wrong, Carrie, we've seen where their opening statement is they still request for a motion to dismiss based on, and then they say why.

Carrie Parker: Right. And I think under -- Carrie Parker, for the record -- under the new procedure, the letter that goes out to the parties telling them that there's -- going to be set for a hearing, sets a deadline for the motion to dismiss; isn't that right, Carrie?

Carrie Lee: Yes.

Carrie Parker: So there's a certain window. So then the EMC coordinator knows if we haven't received one by this date, then it's probably unlikely that we'll get one. So I would leave it to the Committee to decide if an agency who missed that deadline then wanted to submit a motion to dismiss at the hearing. It's up to you if you want to enforce the deadline.

Tracy DuPree: Because we set that on a case-by-case basis?

Mark Evans: Yes.

Carrie Parker: Right.

Mark Evans: Yes, because I'll tell you, I mean, in that last case that we discussed that came back from the court, I mean, if the attorney would've made another motion to dismiss on timeliness and had covered what was in the packet, I think I would have been considering that.

Mandy Payette: I would have.

Mark Evans: But I think, you know, because it was kind of a new process, she didn't realize that that was an opportunity.

Tracy DuPree: A motion.

Mark Evans: But I think that could have saved us all a lot of time because the motion to dismiss did not convince me of that.

Mandy Payette: Yes.

Mark Evans: The packet and seeing what the employee had to say about it convinced me of that.

Mandy Payette: It was his testimony.

Mark Evans: It was his testimony.

Carrie Parker: So that's just another example of how sometimes you need a hearing, because things will come out that weren't in the grievance paperwork.

Tracy DuPree: That wouldn't come out otherwise.

Mandy Payette: Right. Yes.

Mark Evans: Right.

Stephanie Canter: So because of that, though, I don't think we should make it to where the full parties don't have to be present during -- if one of them -- if the agency requests a motion to dismiss, I think it's in the best interests of both parties to be there.

Sherri Thompson: I agree.

Stephanie Canter: Especially if we're going to be making a final decision and we are going to go with the agency's dismissal, the employee has -- should be there so that they can argue their side of why it's either late or not late. You know what I mean?

Mark Evans: So what...

Turessa Russell: So I don't think we should encourage them not to be there by saying they don't have to be there.

Mark Evans: Okay. Okay. Say that again.

Mandy Payette: (Inaudible) what I'm saying.

Mark Evans: Say that again.

Stephanie Canter: So if the agency submits a motion to dismiss and we schedule them for this preliminary hearing, I guess, I heard someone say that they were going to tell the employee that they didn't need to be there. But I think it's necessary that they're going to be there. If we're going to make a final decision, and they need to be able to argue why it is timely, if the agency is saying it's not timely or why the EMC does have jurisdiction. Because we're issuing a final decision and we're telling them it's not necessary to be there, but someone needs to be there on their behalf to argue their side of why they feel it's timely or we have jurisdiction or whatever the case may be.

Mark Evans: Okay. I would just not want to give the impression that if they didn't show up -- and I see what you're saying, if we say something in the letter saying if the parties do not appear, then people might blow it off and miss an opportunity. But on the other hand, I don't want the practice to be if the employee doesn't show up, that we say, okay, well, he or she doesn't care, so we're just going to grant the motion to dismiss. I think we have to make that decision based on the information we have in front of us.

And obviously, if the agency has their information and has explained it and they haven't submitted a response or even if they have submitted a response, but aren't there to defend it, I think we would still consider that in our final decision and not just say, okay, employee, you're not here, you lose. But I get what you're saying is we've got to watch how we word the letter so we don't make it sound like, hey, don't show up. It's not a big deal.

Turessa Russell: Can we word it similar to what would happen in district court, the complaint is filed they get their notice when they're served whatever documentation their served, there's generally a blurb in there saying, if you do not answer, the court could find against you. Basically telling the employee, if they do not appear at this hearing, that we may decide not to go forward. But inform them that that is a possibility at the time that the motion to dismiss or whatever motion is heard.

Mark Evans: So maybe we could have some wording saying if you do not appear for the hearing, then we're not going to have the opportunity to hear your viewpoint and we'll have to make a decision based on the information in front of us.

Mandy Payette: A final decision will be made anyway.

Mark Evans: Yes.

Tracy DuPree: And it's an opportunity to be heard I suppose.

Mark Evans: Yes. And I don't know, I haven't looked at the letter for a little while, but it seems like someplace we say something like that.

Sherri Thompson: Can I ask a question or make a comment? This is Sherri Thompson. What if the employee doesn't show up for whatever reason, we go ahead and hear the agency's side.

We decide in favor of the agency, and then later find out that the employee was on the way to the meeting and was involved in an accident. Would they have appeal rights to that?

Carrie Parker: Deputy Attorney General Carrie Parker. If I represented that employee, I would submit a motion for reconsideration and explain what had happened. And then the agency would have an opportunity to respond, and then it could be set for hearing.

Mark Evans: Okay. So currently what we have drafted for the order scheduling a hearing on a motion to dismiss says, "It is optional, however, if a party chooses not to attend a hearing, the Committee will not have the benefit of hearing oral argument from the party." Carrie's (inaudible). Oh, "If a party chooses not to attend the hearing, the Committee will accept a written statement in lieu of oral argument from that party."

Allison Wall: This is Allison Wall. To clarify is this just for when we receive a motion to dismiss?

Mark Evans: Yes.

Allison Wall: Okay. So the letters are separate versus we're going to have a full hearing?

Mark Evans: Yes.

Allison Wall: Okay.

Mark Evans: Yes. Does that language seem okay or do you think it needs to be tighter?

Turessa Russell: This is Turessa Russell. What I heard you say verbally was that either we needed the employee in person represented or something in writing. I'm not seeing anything that they had the option not to appear.

Mark Evans: Okay.

Turessa Russell: So what does it have?

Mark Evans: It does say, if a party chooses -- I mean, it doesn't really say you have the choice not to appear. But it says, "If a party chooses not to attend the hearing, the Committee will accept a written statement."

Tracy DuPree: I think that wording is as good as it can get possibly. I say that not as a DAG, but, you know.

Mark Evans: Okay.

Turessa Russell: But I think when you say something's optional, it doesn't really -- you see, I think that anything that is involving a case as an employee, especially if I was unrepresented, a lot of people don't understand this process. And you're telling them that it's their option to show up and they can essentially be shooting themselves in the foot. I don't think it should be -- I think they should be encouraged to show up, instead of just saying, you know, it's up to you.

Claudia Stieber: Or strongly recommend it.

Turessa Russell: Yes, I think it should be strongly recommended that they make -- I mean, it's important, to me.

Mark Evans: So maybe if it said something to the effect of all parties are encouraged to attend the hearing; however, the Committee will accept a written statement in lieu of oral argument, something like that?

Turessa Russell: Or even going as far as saying if the party does not appear, we could choose it -- make a decision...

Tracy DuPree: You may lose your opportunity to present your case.

Turessa Russell:...(inaudible) information, that we could choose -- make a decision against what the party that doesn't appear, wishes.

Mark Evans: I think that's in the second part.

Carrie Parker: Deputy Attorney General Carrie Parker. If I may, I think maybe, Turessa, are you trying to get to a default, so -- in a court case, the complaint and the summons are served personally, so you know for sure that they got it.

Turessa Russell: Sure (inaudible)...

Carrie Parker: And then they get a notice that if you don't respond, usually it's 20 days, a default may be entered and you may lose. And I think we used to say that on our motion to dismiss letters to the employee. We've received a motion to dismiss. You have ten days to respond. If you don't respond the motion will be granted. And we found that that boxed us in a little bit. So I...

Turessa Russell: I'm not saying that we should say we will decide against them, but that we can to...

Stephanie Canter: It may.

Turessa Russell:...that we may decide against them, which would encourage them to be at the hearing and inform our employees that don't have any representation or advice on how to proceed with this process.

Mark Evans: Yes, I hear what you're saying. We just -- how I'm going at it is I don't want to tell the employee, hey, if you don't show up, you automatically lose. And what you're saying is, well, if you're making it sound too optional, they might think, hey, I don't need to go, it's no big deal, and end up losing. So I think if we just say we encourage all sides to attend, however, we will accept written argument in lieu of that. If you do not attend, you may, you know, you may not have your case presented fully. And we'll make a decision based on what we have.

Turessa Russell: Yes, I like that, that first verbiage you read, when you first started reading what Carrie now has.

Claudia Stieber: I think whatever verbiage was in there kind of covered that, but...

Tracy DuPree: Yes, I thought so too.

Claudia Stieber: That the committee will render a decision based on the facts known or something to that effect.

Mark Evans: Or the information before them. Okay. So, Carrie, is that something we could circulate to the Committee...

Carrie Parker: Yes.

Mark Evans:...without breaking the -- without violating the Open Meeting Law?

Carrie Parker: Well, there is a matter that has been scheduled for a hearing on February 6th, and those orders scheduling that hearing have already gone out. So those could be sent.

Mark Evans: Okay. I see what you're saying. So maybe we could send out what has already gone out, and then discuss it at that meeting or...

Carrie Parker: If you have -- it could be discussed at that meeting or if you have comments that you want to send just to me.

Mark Evans: Just to Carrie, not to everybody else.

Carrie Parker: Just to me, but we could set it on another agenda.

Mark Evans: Okay. But it could be one of our regular meetings. Where people lose is if you're not on that committee, you're not going to have the vote.

Claudia Stieber: But it sounds like Carrie's opening up the option that if we can't be there but want our information, we can send it to Carrie.

Mark Evans: Right.

Carrie Parker: And then I also wanted to let you all know, this is Carrie Parker for the record, there's a footnote that we dropped, "As previously noted, while the hearing will be limited to issues relevant to the motion to dismiss and any issues raised in the grievance response, if the EMC decides to grant the motion to dismiss, then the grievance request for EMC consideration will consequently be denied. If the EMC decides to deny the motion to dismiss, then the above-mentioned grievance will be set for hearing on the substantive merit." So we put that footnote in there to explain not only what the next step would be, but to reiterate to the employee, you could lose. If you lose on this motion to dismiss, it's done. So that's why we put that footnote in there.

And it's also in the notice that goes out: We received a motion to dismiss. Your response is due within this many days. And if the EMC agrees with the motion to dismiss, it's done. You've lost. So that's kind of like the second or third time that they've heard that.

Mark Evans: Okay. Any other comment from the Committee on this?

Sherri Thompson: Can Carrie repeat what she -- we didn't hear everything she said...

Carrie Parker: Did you hear the footnote?

Turessa Russell: That's what we're questioning.

Carrie Parker: Okay, the footnote was, "As previously noted," and that's a reference to the fact that we've already told them at least once in a letter, telling them the deadline for their response to the motion to dismiss, "while the hearing will be limited to issues relevant to the motion to dismiss and any issues raised in the grievance response, if the EMC decides to grant the motion to dismiss, then the grievance request for EMC consideration will consequently be denied. If the EMC decides to deny the motion to dismiss, then the above-mentioned grievance will be set for a hearing on the substantive merits."

Turessa Russell: I like it. I just don't know if a layman's person would understand it.

Carrie Parker: Yes, that was written by a lawyer.

Stephanie Canter: I can tell. And, unfortunately, for at least some layman employees, legal jargon can be very intimidating.

Carrie Parker: So maybe if the EMC decides to grant the motion to dismiss, then the grievance will be denied. What do you think of that?

Stephanie Canter: Instead of saying denied, just say it will not be heard, right?

Mark Evans: I think technically it's being denied.

Carrie Parker: Yes. I mean, the decision that would generate from that motion to dismiss hearing would be granting the motion and denying the grievance.

Mandy Payette: Which makes it a final decision.

Tracy DuPree: Right.

Mark Evans: Yes.

Stephanie Canter: Because is that how we've done it in the past? Because my understanding was that if we did a motion to dismiss, it was a motion to dismiss. It wasn't that it was either being approved or denied, because the Committee hasn't denied the grievance. They've denied that they're going to hear the grievance. (Inaudible) two different things.

Carrie Parker: No, that's the -- that's the way it was done. Therein lies the conundrum of why we thought maybe we shouldn't have been doing it that way.

Tracy DuPree: Yes.

Mark Evans: Because then the court treated that as denied, basically. And that's what brought us here.

Claudia Stieber: So now we've got case laws that exist.

Mark Evans: Now we've got case law that is making our lives miserable. But I'm not bitter. Okay. Other comments from the Committee? We've talked about how we would handle the motions to dismiss. We've talked about what the scheduling order should look like. Any other comments, specifically, from the Committee about this issue?

Turessa Russell: Have we come to a decision or have we just thrown ideas on the table?

Mark Evans: What I would like to do is I would like to open it to public comment, hear what the public might have to say about this. And then what I would like to do is get a motion determining if we want to hear the motions to dismiss how we've discussed, which is scheduling them. And then I would say the second part would be an action item where we send out the letter to the Committee. You can look at it. Come back to us with your suggestions. Come back to Carrie, specifically, with your suggestions. We bring that to an EMC Committee -- a regular EMC Committee meeting, which we've had proper time to duly agendize and notify. And then vote on it. And then vote on it. But...

Turessa Russell: Is it possible...

Mark Evans: Pardon? Pardon?

Turessa Russell: Is it possible for the Committee members that are not currently scheduled for the next hearing to at least have the option of appearing to...

Mark Evans: Yes.

Turessa Russell: ...be involved in the decision for the procedure portion, not necessarily any of the grievances that are scheduled?

Mark Evans: If we voted on a procedure, would we have to have equal/equal or are we okay?

Carrie Parker: Carrie Parker, for the record. The statute that requires an equal number is for the adjustment of grievances.

Mark Evans: Okay. (Inaudible).

Carrie Parker: So for regular business you would just need a quorum.

Mark Evans: Okay. Yes. So, yes, they could. They could.

Carrie Parker: Just for the procedure questions.

Mark Evans: Yes, just for the procedure questions.

Allison Wall: Allison Wall, for the record. I just have another clarifying question. When the employee receives the letter that says the agency has submitted a motion to dismiss, is it made clear to them that this is preliminary and that they wouldn't need witnesses and a full packet?

Mark Evans: I think so. Because basically it says this is all we're talking about.

Allison Wall: And I know this is probably current procedure, you know.

Mark Evans: Yes.

Carrie Parker: No, I didn't bring a copy of that letter, but I believe it does say that.

Allison Wall: And then they would understand that if we don't deny it, we accept it, then they would prepare their packet and get their witnesses.

Mark Evans: Right.

Allison Wall: Okay.

Mark Evans: Right. And we can make that clear in the meeting as well. It's just we haven't ever done this before. So...

Allison Wall: Okay.

Mark Evans:...we've got to figure that out so, hence, the meeting. Because these are all (inaudible).

Stephanie Canter: So in the letter for the preliminary hearing is it going to say in there that it's not necessary for them to provide 15 packets or whatever and tell all their witnesses to come? Just they need to be there, right?

Mark Evans: Yes.

Mandy Payette: That's correct.

Carrie Parker: This is Carrie Parker. I think the first letter is what's setting the deadline just to ask for a response. And then when they get the order scheduling the hearing, it tells them what to put together, if they have anything additional. And that was just so the door wasn't closed if they wanted to add anything. But theoretically they should have submitted everything with their response to the motion to dismiss.

Mark Evans: Okay. Other thoughts from the Committee?

Michelle Weyland: How about jurisdictional matters? Is that going to be part of that whole motion to dismiss?

Mark Evans: It'll be a motion to dismiss.

Michelle Weyland: Okay.

Mark Evans: And, you know, that's just -- I don't even want to talk about that, because I don't know of an easy way around that, because if somebody goes through the wrong process and they don't find out until this point, I don't know what they do.

Tracy DuPree: There is no easy way around it.

Mark Evans: Yes.

Tracy DuPree: I mean, it'll just have to be something to deal with.

Mark Evans: Yes. All right. So we have discussed the hearing for the motion to dismiss. We have discussed the documentation to the employee. I would now like to open it to public comment. Any thoughts from people up north? This is the public comment chair. And the reason you have to come here is because it's always nice to sit by me. And also -- also we need to record you. So any public comment?

Alys Dobel: I just have a question. Hi. For the record, my name is Alys Dobel. I work for the Department of Motor Vehicles. I just have a question. If during the motion to dismiss hearing or EMC, if either party brings forth additional information, typically, in the past, we've been allowed to either accept or deny that additional information. Would that be something you guys would set forth? It's just a question.

Mark Evans: Give me an example of what it might be.

Alys Dobel: Well, my experience in the past is when we've asked for a motion to dismiss the other party also has time to provide information as to why they don't think it should be dismissed. And then let's say that we before the EMC. When we get to the EMC a lot of times either party will come forth and they'll find additional information that may be pertinent to the case. And then, at that time, because it's not part of the packet, you have to request -- or at least this is how it used to be -- you used to have to request if you can add that as additional evidence or an exhibit.

Mark Evans: Oh, okay.

Claudia Stieber: Doesn't the Chair just ask the other party...

Mark Evans: Yes.

Claudia Stieber:....do you have any objection to the...the state or the...

Alys Dobel: Right.

Mark Evans: Yes.

Alys Dobel: Right. Are we going to be able to do that?

Mark Evans: Yes, I would -- I don't see why that would be different.

Claudia Stieber: I don't see why not. Yes.

Alys Dobel: Okay.

Tracy DuPree: We want to give everybody a fair hearing to get all their stuff out, so...

Alys Dobel: Right.

Mark Evans: Now, I mean, if they threw something at you that was totally amazing and we granted it, I mean, then at least I guess you could come back in the actual hearing and counter that. But, yes, certainly we could give people the opportunity to object.

Carrie Parker: Yes. And the motion to dismiss hearing should just be evidence related to the motion to dismiss. So timeliness...

Alys Dobel: Okay.

Carrie Parker:...does it meet the definition of a grievance.

Alys Dobel: Yes.

Carrie Parker: So the motion to dismiss hearing, the evidence presented there should just go to the issues for the motion to dismiss, which would be jurisdiction, timeliness, definition of a grievance, those kinds of things. It shouldn't be, yes, my supervisor said XYZ, and here's his testimony. It should be just limited to the motion to dismiss.

Carrie Parker: And then you get that other juicy stuff at the full-on hearing.

Mark Evans: Yes.

Alys Dobel: Thanks.

Stephanie Canter: Okay, so I have a question now. Say, the agency doesn't submit a motion to dismiss and it's clearly not within our jurisdiction and we move forward to the actual hearing and we can all see that it's not within our jurisdiction. Are we going to somehow mess up the employee's possibility of actually submitting their complaint in the proper jurisdiction because of timeline? Does that make sense?

Mark Evans: Yes, it does. And I don't -- because what I'm thinking is if they put through like a sexual harassment complaint through us...

Tracy DuPree: And we have 300 days.

Mark Evans: And the agency's telling them the whole time, it's not -- you're not in the right...

Stephanie Canter: What if the agency doesn't say anything now? The agency's essentially buying themselves time while it sits with us.

Turessa Russell: Because the employee's got it in the wrong place.

Mark Evans: Yes.

Stephanie Canter: Can't a Committee member then make a motion?

Mark Evans: Yes.

Turessa Russell: If the Committee put it on the Agenda without a motion from either party saying you've got a jurisdictional issue, why can't it be put on the Agenda as a preliminary jurisdictional issue?

Mark Evans: Because you're not going to see them all. But I think you could bop into the hearing and say, "I've read this case. I don't think we have jurisdiction. I want to make a motion that we dismiss this because this is a sexual harassment case. We don't have jurisdiction."

Stephanie Canter: Right. But then you're already in the middle of the hearing and it's been three months...

Mark Evans: Right. But I don't know what else we can do. Because you're not going to -- you, the Committee members aren't going to see that case until you have your packet.

Tracy DuPree: Right.

Stephanie Canter: Right. And I understand that. But if the agency doesn't submit -- like the agencies know what is within our jurisdiction. But the agency can essentially buy themselves some time and allow the statute of limitations for whatever incident occurred for the employee to file with the proper agency, because they filed with us and we've done nothing with it. Does that make sense?

Mark Evans: Yes. But I'd have to also say -- I'd also have to say that I know in the sexual harassment training I do, and I'm pretty sure on the sexual harassment training that you're going to find online, it does talk about those time frames. So, as a training manager, if they're not listening to my wisdom and they're not -- I mean part of it is you've got to be responsible.

Mandy Payette: To some extent.

Mark Evans: So, yes, to some extent. If the information is out there...

Mandy Payette: And this is -- this is Mandy, and for the record, Stephanie, you know, in the past, when we were allowed as the Chair or the Vice-Chair to look at all the grievances coming in, when we saw that it was in the wrong jurisdiction, we sent a letter out and we

advised the employee that this isn't the right jurisdiction and this is where you really should be going to. Essentially...

Stephanie Canter: Right.

Mandy Payette: Right. So essentially what happened is the district court said, no, you can't do that because you don't have a quorum. So it's backed us into a corner where we have to go now through and open it up for a hearing in the public and have a quorum vote on it. So, while I understand what you're saying as far as the timelines for the employee, I'm not sure there's anything that the EMC can do as a committee to circumvent that now, where we used to circumvent it before.

Turessa Russell: I'm not saying that we need to circumvent it. But if the Chair and the counsel that's reviewing the paperwork sees that we've got a jurisdictional issue or something that we need to discuss as a committee, why can't the Chair put it on the agenda before we get through...

Stephanie Canter: Because they don't look at them anymore.

Turessa Russell: They don't look at them at all?

Stephanie Canter: No. They're not (inaudible).

Mandy Payette: Oh, we look at them.

Mark Evans: We look at them. So could we, Carrie, just write a letter saying we don't think this is in our jurisdiction?

Carrie Parker: Carrie Parker, for the record. What I would advise in that situation would be to request a motion to dismiss or -- not request a motion to dismiss, but to say this matter will be set for a hearing on the issue of jurisdiction.

Carrie Parker: Please submit your arguments for or against and set it. So you could set it for a preliminary hearing. You could set it for a motion to dismiss a hearing without...

Mark Evans: Even if the agency didn't do it?

Carrie Parker:...a motion to dismiss. This is if you want to set up this procedure.

Carrie Parker: So you would screen it and you would say, you know, I think we need to hear this on just the jurisdictional issue. But then you would request the parties to make the arguments and submit them and you'd set it for a hearing. And that would be one way to add that screening step.

Mark Evans: Okay.

Carrie Parker: But I would be careful -- just to correct my misspeech before, don't request a motion to dismiss, because that sounds like you're already going to grant it. Just say, we need more information about...

Mark Evans: Okay. To determine jurisdiction.

Mandy Payette: Correct.

Carrie Parker: Right.

Allison Wall: This is Allison Wall, for the record. Now, I think I'm more leaning towards what Mark is saying is that a -- the core of the EMC -- I think, before, like Mandy said, it was a courtesy that we were sending it to advise the employee.

Mandy Payette: Right.

Allison Wall: Are we taking on another role that isn't necessarily the intent. I also think maybe, like Mark said, putting some of the responsibility back on the employee, but also some faith in the agencies, because I don't know about an agency that's going to buy time. If there's a sexual harassment, I mean, the agency can get into trouble if they don't refer the employee. If they know there's a sexual harassment issue, and they don't refer the employee, I mean that's a whole nother issue. And I wonder, by setting up this additional process, if we're just taking on something that's necessarily the intent of the Committee.

Mandy Payette: I would agree.

Mark Evans: Okay.

Allison Wall: I think there's a -- I think, you know, supervisors go through training for this and certainly that's the first step usually. And I would hope that if it got to the administrator and they saw that, that they would be taking some action on the grievance if they see that it's supposed to be sexual harassment and not through this venue. So I agree, I don't know that we should be getting into that area.

Mark Evans: All right. So, Rob, you have public comment?

Rob Easton: Yes, just a couple comments. Rob Easton with NDOT. Two comments I had. One was on the initial request for a dismissal. When that comes in to the Committee, I'm just thinking that it might be a good idea to hold off on any other action on that grievance. So rather than starting to move forward with the resolution conference, we think that there's no merit to the case or that there's some issue that has to do with it being timely or whatever, really there's no point in doing a resolution conference at that point. So I think we should hear the request for dismissal first before we set up a resolution conference.

And then if we decide that it does have jurisdiction or if the Committee does have jurisdiction, or that it was filed timely or whatever the issue was, then we can move forward with other venues. Because the resolution conference is still a step forward and it's prior to the EMC hearing. But, you know, what's the point of arguing the case again or trying to resolve it if we don't think that the remedy is appropriate? Because that might be part of the reason for the request for dismissal, that the remedy isn't appropriate.

Now -- and then the other part would be, and maybe you guys are already addressing this because I haven't seen one of these in a while, where we request a dismissal, and the Committee feels that there is some merit to that, but there are pieces of the grievance they still want to hear. So then, when it goes to the Committee, you guys decide that, hey, we're only going to hear a portion of it, and that has to be clear to the employee that we're not going to bring up those other issues. So, if you felt that the grievance had merit but the resolution didn't, you might allow the employee to still have a hearing, but we wouldn't consider the proposed resolution.

Mandy Payette: Right. And we state that. We state that in the very beginning. Usually whoever's chairing it will say that we don't have jurisdiction to grant this resolution or we'll only hear this portion of the EMC, and we keep it to that portion.

Rob Easton: So that would still be procedure (inaudible)?

Mandy Payette: Yes.

Mark Evans: But how are we going to do that from now on?

Mandy Payette: I think we would do it the same as we always do. We do that at the hearing itself.

Stephanie Canter: Right, but now everyone's going to have to vote on that. Before, I remember the last hearing we did with the three ladies from DMV who didn't get the promotion that they wanted, one of them, in her grievance, she had a bunch of other stuff added in. And Carrie and I had talked about it beforehand. So as soon as the meeting started, I told that grievant that certain portions of her -- what she had addressed, we were not going to even discuss, because it wasn't our jurisdiction. But now those have to be looked at and the Committee as a whole has to either vote whether they're going to hear it or not hear it. Do you see what I'm saying?

Mandy Payette: Yes, but I think it's still -- instead of just saying we're not going to hear it, you just say, you know, we have a motion that this isn't in our jurisdiction. And so I think we can still limit the hearing, we're just going to have to put it to vote.

Stephanie Canter: Right. Yes.

Rob Easton: And get it in writing?

Mandy Payette: Yes.

Mark Evans: Yes. Although we could still have had a motion to dismiss from the agency and then we could turn around and say, okay, we're always going to hear this.

Stephanie Canter: Because in this woman's grievance...

Carrie Parker: So the motion would be partially granted, and part...

Stephanie Canter:...parts of her grievance were within our jurisdiction, but other parts of it weren't within our jurisdiction. So it would have to come before the Committee at a full hearing and we could kind of have to, from the very beginning, you know, say that these things were addressed and, you know, we don't feel -- or have one person say, "I don't feel that these are within the Committee's jurisdiction." And then the Committee says their piece and there's a motion that those issues aren't going to be discussed and then they're omitted from it and then the rest of the grievance moves forward.

Mandy Payette: Yes.

Mark Evans: Yes, I think that what the Committee members are going to find is that they're only going to have to come into those meetings thinking more about do we really have jurisdiction over this and not be shy about saying, "I don't think we have jurisdiction over this."

Mandy Payette: Right.

Mark Evans: I think that's perfectly fair. And even if everybody's done all their packets, you know, I think the agencies aren't going to mind too much. I don't think the employee's going to be very happy. But, I mean, that's part of being the Committee, I think, now. So to some extent, I think it's going to be more complex, but I do think it makes everything more transparent. And I think it'll give agencies a better feel for what the Committee is thinking.

All right. Other public comment? This is a good meeting. We're realizing all the problems.

Kareen Masters: For the record, Kareen Masters with the Department of Health and Human Services. Just a couple suggestions. I guess one issue that I have with the motions to dismiss, I think, at least my experience as an agency, I feel compelled that an attorney has to develop those. And I think that gets away from what the EMC process is supposed to be, which is an employee-friendly process where you don't have to have an attorney present to represent you.

So I was wondering, maybe one suggestion would be, instead of requiring a motion to dismiss, maybe we could develop a form that was titled, like, evaluation for request for EMC hearing. And either the agency or the EMC Chair could complete that. And there could be little check boxes, if it's something very simple, like not timely filed, no jurisdiction and, you know, just a brief paragraph could be inserted explaining your point. And then that form would be sent to the employee so that they could have the ability to respond to each paragraph that was written and it just would seem like a simpler process for the employee and save our attorneys time, too.

Mark Evans: Personally, I think it's a good idea. I don't know if I'm supposed to comment on public comment.

Stephanie Canter: What did she ask before?

Mark Evans: Well, instead of doing a motion to dismiss, which, you know, you hear a motion to dismiss and they're probably going to have their lawyer draft it and then that's probably going to turn around and make the employee feel like they have to go get a lawyer to respond to it. She's wondering if we could come up with kind of a form that the agency could

fill out and say, look, I don't think you guys have jurisdiction. Here's why. Chink, it's late. You know, it's not under your jurisdiction and then the employee could respond. And, you know, I think...

Stephanie Canter: Isn't that kind of soliciting a motion to dismiss though?

Sherri Thompson: I think it's more advising that the employees that there could be multiple reasons why it's going to be dismissed. It's not just one reason. It's jurisdiction. It's timeliness. It could be multiple. It's showing them the importance of it.

Turessa Russell: To me it sounds similar to what a family member of mine has gone through down at the family courts, where the self-help when it comes to the divorce process. I think that's what our public comment is currently asking for is just basically a simple form to help keep the attorneys out of it.

Carrie Parker: Well, this is Carrie Parker. I'm wondering -- this is getting into policy. So, if I've stepped outside of my lane, just kick me back in. But this seems like a very valuable tool for the beginning, before you submit your grievance, let's check this off.

Tracy DuPree: Let's make this part of the grievance package...

Carrie Parker: Twenty days is, you know, one of these issues that's covered by a grievance is not sexual harassment, is not covered by federal law, is not -- you know what I mean? Because I know that DHRM has an understanding the grievance type, but it's in paragraph form. And if you're angry, and you're typing up your grievance, are you going to read through that? But, if there's a box that you can just check off, that might be a good tool...

Tracy DuPree: It would be a great tool.

Carrie Parker:...before they even submit their grievance.

Mark Evans: Okay. We can't do that. And is that something staff could look at and then perhaps that could evolve into what we use instead of a motion to dismiss? Because then you could turn around and say, see the 20-day thing? I mean it could be an educational tool. And I'm all about that, aren't you? Yes.

Carrie Parker: And that could be the cover sheet to your grievance.

Mark Evans: Yes.

Carrie Parker: A check-off that you've met all these requirements.

Michelle Weyland: That first page in NEATS.

Carrie Parker: Yes.

Mark Evans: Well, don't try to change NEATS. That's not going to go well.

Stephanie Canter: Do we have like a letter that says thank you for submitting your grievance?

Mark Evans: We're glad you're angry with this -- say again?

Stephanie Canter: Is there something -- because we can't really say it's not our jurisdiction or we can't say you need to go here and you need to go there. But we can say, you know, these are some common things that have happened in the past. Like, you know, thank you for submitting your grievance to the EMC. These are some things that you might want to consider and have -- you know, if it's this kind of issue, you can contact this agency or if it's this kind of issue, you contact this agency. And then like a we'll be in touch with you soon to schedule it or something like that. Because then they withdraw it and put it in the right place.

Mark Evans: I don't think that's a bad idea. I mean, I think the -- I mean, it gets back to the instructions. And I'm not sure what the instructions say anymore, because it's been awhile. But I do think Carrie's point's right. If you're angry, my experience is they file everywhere they can possibly think of, instead of just finding the right place to file.

Mandy Payette: They file anywhere and everywhere.

Tracy DuPree: Yes.

Mark Evans: So -- and it seems to me like, at the staff level, when I worked at the Division of Human Resource Management -- Den is over there showing me forms -- you know, we did try to refer to them. So, what are you showing us, Denise?

Denise Woo-Seymour: Should I show it to you?

Mark Evans: Yes, show us. Are you finished?

Kareen Masters: Yes.

Susie Bargmann: She has more.

Kareen Masters: I have a different subject, but...

Mark Evans: Okay, you can come back.

Tracy DuPree: Stay tuned.

Denise Woo-Seymour: Denise Woo-Seymour, Division of Human Resource Management. So this is the current format that's available on the NEATS site. And it explains how to file a grievance. And the actual form is in paragraph form, as Carrie Parker remembers correctly. And you're correct, it's a -- I think it is -- personally, I think it's a good suggestion. Because it asks it in paragraph form; whereas, I think the appeals form -- it's also so much the paragraph form, but it asks you are you currently serving probation period or trial period? Which might be another good question to stick in here, as Michelle Garton's suggestion.

So, I think you're right. When you're emotionally upset, all you think about is how angry you are and you're not logically thinking Am I filing it timely? Am I in my trial or my probation period?

Mark Evans: Yes.

Carrie Parker: And I didn't mean to find fault with your form.

Denise Woo-Seymour: Oh, it's not my form.

Mark Evans: There's many people that have worked on that form.

Carrie Parker: Well, I think I probably worked on that form.

Mark Evans: All right. I think that's a good suggestion. I don't think that's something...

Stephanie Canter: What was the suggestion? We didn't hear it.

Mark Evans: From Denise or from Kareen?

Denise Woo-Seymour: And from Carrie Parker?

Claudia Stieber: Both.

Mark Evans: So Kareen's suggestion was, come up with a form that kind of makes it easy for people to check off to see if what they're doing actually qualifies for a grievance, if it's timely, et cetera, et cetera, et cetera. And so the feeling is that could be used for our purposes, but that also might be something that we would want people to have access to before they file their grievance, so that they could see if their grievance really met the criteria for a grievance.

And so what she's thinking is perhaps they could not only change the instructions, but there might be things that they could change on the grievance form itself, similar to what they do with the hearing, so that they would look at that and perhaps realize it. Because even though there was a lot of work done on the instructions, and the instructions are posted at about six different places, they are kind of gray and you might not read them. You might not read the part that says we can't make anyone apologize to you. You might not read that part.

So, yes, so we might be able to come up with a form -- adjustments to the form that would make that easier, but that's going to have to be done by staff, not us. But I think that it's a good suggestion. So I guess we could...

Stephanie Canter: Is that for the written grievance or the one that's submitted online?

Mark Evans: It would have to be for both.

Tracy DuPree: Yes.

Mark Evans: They're pretty consistent. I mean, they're different. But it would have to be for both. Okay. Kareen? More?

Kareen Masters: Yes. My next comment is just an observation. When I was preparing for the meeting, I thought the language that Carrie referred to earlier about the Committee shall not hold any hearing or make a final decision for the adjustment of a grievance unless an equal number of members (inaudible) pursuant to paragraph A and B of subsection 2 attend the hearing and take part in making the final decision. That's actually fairly new language that was introduced in 2011 through, it looks like, AB354.

So maybe that's -- at least that was kind of my interpretation of maybe why the court ruled the way it did when it hadn't been an issue in the past. But it also brought up that maybe there needs to be another statute change that would allow the EMC to make jurisdictional decisions and that type of thing, and maybe that would be part of the BDR that would be needed.

Mark Evans: Okay.

Kareen Masters: And my third comment was I agree very much with Rob's suggestion that there shouldn't be resolution conferences prior to the hearings on the motion to dismiss. I think one thing that's particularly problematic is the way the regulation is written, it says, "The submission of a request for a resolution conference does not deprive the Committee of jurisdiction to consider the grievance if the parties reach an agreement for the resolution of the grievance at the resolution conference, where the employee subsequently notifies the Committee that the agreement has failed."

So if we encounter a situation where it's an issue that the EMC doesn't have any jurisdiction over -- through this regulation we're kind of inserting the EMC in the process again if they do reach a resolution, because the employee then can come back to EMC and say, "Now, I want you to enforce it." And so I think they should be two separate and distinct issues. And if the EMC doesn't have jurisdiction over the grievance or it's not something that -- or something that you've heard before, that the resolution conference should take place after the hearing on the motion to dismiss.

Mark Evans: Okay. Thanks, Kareen. Other comment in Carson City on this Agenda item? And I think we're kind of overlapping into some of the other Agenda items, but that's okay. Because I think by the time we get there, we're going to be out of interest (inaudible) this afternoon. Is there public comment in the South on this item?

Jeanine Lake: Hi, this is Jeanine Lake. I'm with AFSCME Local 4041. I have a question about the -- and clarification or even concern about no resolution conference if there's no jurisdictional issue. First off, part of the problem is the employee doesn't know there's a jurisdictional issue until it gets to court. And in the first and second levels of the grievance process -- the lowest levels of the grievance process -- the agency is not telling them that. In many cases, employees get just a typical response to grievance is denied, I concur with whomever. There's no explanation. So if you get to that level, the employee is expecting to be able to have that resolution conference to try to resolve the issue, because at the lower levels nobody bothered to try to resolve the issue with the employee. So that's one of my concerns and this happens frequently.

Tracy DuPree: Yes.

Jeanine Lake: And I know that the resolution conference is encouraged. And sometimes maybe that's all it takes is a resolution conference to sit there with the employee and say, well, you know, to be honest with you, we just don't -- the committee doesn't have jurisdiction. These are the reasons. If they're not going to answer those questions at the lowest level and object to the jurisdictional issues at the lowest level, I don't think an employee should have to go through all those levels to get that answer. That's a concern that I have.

Also, I guess one of the questions I would have is, is there anything in writing that explains what you're jurisdictional issues are, what you don't have jurisdiction over? Because I think that one of the concerns, and I'm going to be very honest, some agency HR departments, some agency supervisors, once an employee files a grievance, they will tell that employee, well, you have a harassment issue here. You have a problem with your supervisor. You're claiming that your supervisor treats you differently. So that has to be referred to the Sexual Harassment/Discrimination Unit.

So then that matter gets referred to the Sexual Harassment/Discrimination Unit for the Department of Human Resource Management, and then the employee's told by that unit, well, you don't meet the Title VII criteria for our unit, and it's not sexual harassment, so therefore, it's out of our jurisdiction. What is an employee supposed to do at that point? Because, by then, they may have missed their 20-workday time frame.

So those are just some things that are coming up in the agencies. And I have mentioned my concern about that to Ron Grogan, you know, previously about how some of these agencies are referring these matters to his unit, and then we're getting, you know, the employee's getting stuck not having the opportunity to have the matter handled. So those are things to consider.

I think that -- and again, and I do agree that if there is something that's explained to an employee, that they need to be present at a motion to dismiss hearing, preliminary hearing. I think that it's very important that it be done in layman terms, because we get questions all the time, what does this document mean? So I think it needs to be as simple as possible, and stress that it's very important for the employee to be there.

Mark Evans: Okay. I would just have one comment. I think the best place to determine whether or not it is an EMC jurisdiction is in NRS 284.384. And basically what that says is "The Commission shall adopt regulations which provide for the adjustment of grievances for which a hearing is not provided by federal law or..." and then it cites several NRSs. And, if you go through those NRSs, those are going to tell you the areas that are clearly not a jurisdictional issue. And then it says, "Any grievance for which a hearing is not provided by these, is subject to the adjustment pursuant to this section."

So I would say that that makes it fairly clear. I think where we sometimes have a problem, and something that perhaps you could take back to your members, is if there's things that we don't feel like we can do. Like, I don't know that we can make anyone apologize to anyone.

So those types of things. But I think this would give you a good list of what those things are and could give us a good list that we could maybe highlight in whatever material we come up with for that form to kind of say, hey, if you're going to go here, you need to go here. And I know -- I hear you on Title VII, it's always -- you know, to some extent, employees know

how to pick up on those terms, hostile environment. But a lot of times what they're calling a hostile environment is a jerky supervisor and not sexual harassment or age harassment. So, I think good points.

Okay. Other public comment about this item? Because we are now at five to 4:00. So I would like to at least get some motions on this first Agenda item from the committee. But, again, any public comment in the South?

Turessa Russell: It doesn't appear so.

Mark Evans: Okay. All right. So I guess what I would like to ask the Committee first for a motion on is do we want to go forward with having those mini-hearings or whatever you want to call them, on the motions to dismiss? Is that how we want to do it? Or do we want to go to something like Tracy suggested where we just bring everything in at the end of the meeting and say do we have jurisdiction? So I guess what I'd like to hear is a motion from the Committee on how you really want to do this.

Tracy DuPree: I would just set up a mini-hearing with, you know, like two and two.

Mark Evans: Okay. What I'd like to hear is either a motion to go forward with having the motion to dismiss hearings. If we get a motion to dismiss from an agency, then set that to be heard by the full Committee and vote on it there. Or do we want to some other approach, like Tracy had suggested, where we just bring in all the grievances that are available at that point and go through them one by one and as a Committee decide if we have jurisdiction. So what I'm looking for from the Committee is a motion of this is how we're going to do these motions to dismiss.

Claudia Stieber: Mark, does that -- whoever makes the motion, does that need to include that we're going to calendar every grievance that...this is Claudia. I was asking Mark, for whoever goes forward and makes a motion, does the motion also need to include that we're just going to schedule each grievance that we get for a hearing?

Mark Evans: I think that would be clear.

Claudia Stieber: Okay.

Mark Evans: Because then that's going to give those brave souls that come after us better documentation to know what we're thinking.

Claudia Stieber: Thank you.

Mark Evans: I think, you know, as specific as we can make it within reason, I think, will be better for everyone.

Claudia Stieber: I'll give it a try.

Mark Evans: Okay.

MOTION: I would make the motion that the Committee schedules for hearing each grievance received. However, if a motion is received prior to the hearing taking place, the Committee would then handle the motion that's raised at a full meeting prior to and rule on that issue before proceeding to a full hearing of the grievance.

BY: Claudia Stieber
Discussion

Mark Evans: Attorney?

Carrie Parker: So, Carrie Parker, for the record. The way the process is right now when a grievance comes in, they're notified that it will be set for hearing, but it is not actually scheduled for a date, because we haven't organized yet which Committee members are available and which agencies can't be heard because of those Committee members' affiliation. So they can't actually, in some cases, be scheduled yet. But they -- so I was wondering if you'd want to change it to the Committee will put them in the queue or something for scheduling them. Because right when they come in we can't schedule them, because the line could be so long that...

Mark Evans: So could it be will be scheduled for the next available hearing, meaning if the other hearings are full, then it would be the one where we had an opening, unless a motion to dismiss...

Tracy DuPree: Scheduled for the soonest possible date and then, you know, whatever.

Mark Evans: Okay. The soonest possible...

Carrie Parker: Yes, I would put in some flexibility, because sometimes, because of who the Committee members are, they can't hear a certain grievance and then it gets pushed out.

Mark Evans: Okay.

Claudia Stieber: So, this is Claudia. Do I make a motion to drop my first motion and...

Carrie Parker: No, it was never seconded.

Claudia Stieber:...restate a second motion or just amend my first motion?

Carrie Parker: Just amend it.

AMENDED MOTION: Move to amend my first motion to include verbiage that when a grievance is received it will be scheduled for the next available hearing date to the Committee.

BY: Claudia Stieber

SECOND: Mandy Payette

VOTE: Vote was unanimous.

Mark Evans: Okay. Does that work?

Carrie Parker: That sounds fine.

Mandy Payette: I second that.

Tracy DuPree: Also, I was going to say, I'll second that (inaudible).

Mark Evans: All right. All those in favor say aye.

Group: Aye.

Stephanie Canter: (Inaudible) discussion first?

Mark Evans: All right. Sorry.

Mark Evans: Discussion?

Stephanie Canter: My question is how far out are we scheduling grievances right now?

Tracy DuPree: We don't know. It depends.

Mark Evans: I'll tell you what, we've just scheduled a whole bunch that were waiting. I think we're farther out because in often cases we're waiting for resolution conferences to be done or...

Stephanie Canter: So it's not waiting on us, it's waiting on resolution conferences?

Mark Evans: I would say for the most -- I would say there was a little waiting on us. But I think Carrie and I just scheduled this week everything we could schedule. Is that true, Carrie Lee?

Carrie Lee: Yes.

Mark Evans: Yes, we scheduled everything we could and...

Carrie Parker: How far out are we on scheduling?

Mark Evans: I think just to, what, the first meeting in February?

Carrie Lee: And possibly in the second.

Mark Evans: Yes, so we've got cases for the meetings in February, and then everything else we're waiting for resolution conferences. And that does include motions to dismiss.

Stephanie Canter: Okay.

Mark Evans: So I guess that's not awful, but they are -- I mean, they are old.

Stephanie Canter: Yes, but if it's not waiting on us, then that's a good thing, I guess.

Carrie Parker: This is Carrie Parker. Right. And sometimes what I've observed is because of that 21-day notice requirement, if somebody has asked for a continuance and their slot opens up, we can't slide someone else in there, because they wouldn't have the 21-days' notice. And that kind of backs us up a little bit too.

Mark Evans: Yes. But that's kind of why we went ahead with that second February meeting, because we thought, if we get the continuances -- and I would say probably, more than anything, that's what's backing us up are the continuances. You know, we're ready to go and then one side or the other wants a continuance.

Tracy DuPree: And we're always going to have that no matter what we do.

Mark Evans: Yes.

Stephanie Canter: Mark, are we getting a lot of continuance requests? And are they on different cases or the same people asking for multiple continuances.

Mark Evans: No. People get one each side. That's it.

Stephanie Canter: Okay.

Mark Evans: One each side. No more than that.

Stephanie Canter: Okay. That was my question.

Mark Evans: Okay. All right. So we've got...

Turessa Russell: Can we hear the full motion over again so that we know what we're voting on? It's not as clear with that microphone sitting at the end of the table and Claudia at the other end.

Claudia Stieber: Can I move?

Carrie Parker: Yes.

Claudia Stieber: I'm going to wing it at my motion since I didn't take notes on what I was saying...

Carrie Parker: I'd give you mine, but you wouldn't be able to read them.

AMENDED MOTION: Move to amend my first motion to include verbiage that when a grievance is received it will be scheduled for the next available hearing date to the Committee.

BY: Claudia Stieber

SECOND: Stephanie Canter

VOTE: Vote was unanimous.

Carrie Parker: I was nodding.

Turessa Russell: Then, yes, that -- okay. So we're good on our motion.

Tracy DuPree: Yes.

Mark Evans: Yes.

Mark Evans: All right. All those in favor.

Group: Aye.

Mark Evans: Any opposed? No opposed. Did it pass unanimously?

Tracy DuPree: It did.

Mark Evans: All right. Good for us. An hour and a half, but we're unanimous.

Mark Evans: All right. What was the other thing we wanted to talk about?

Stephanie Canter: Are the resolution conferences going to be postponed pending a motion to dismiss, or are they going to go forward?

Mark Evans: I don't think we've talked about that. And I was kind of thinking that would be...

Stephanie Canter: An agenda item.

Mark Evans:...an Item under 6, which talks about "Discussion and possible adoption of procedures including but not limited to those related to initial review or screening of grievances, grant or denial letters, the resolution conference and how it relates to hearing." But it seemed to me like there might have been...

Stephanie Canter: The reason I'm asking is that you said that there's a lot of grievances that are waiting on resolution conferences that you haven't scheduled them. But if those get scheduled there could be motions to dismiss, which would essentially put the resolution conference on hold. So are those going to be scheduled now based on (inaudible)?

Mark Evans: No, if the resolution conference is going forward, I just think that's going to be a better resolution for everyone. I would hate to lose the opportunity of people being able to work it out because we're trying to get a hearing scheduled.

Stephanie Canter: So the resolution conference is going happen before they get scheduled then?

Mark Evans: Right. But what we've heard from people is that they think that a motion to dismiss should be heard before a resolution conference is set. So maybe moving on to Item 6, we should have some discussion on that. What do you think?

Stephanie Canter: So here's my question. We've just said that we're going to schedule -- we're going to -- when we get a hearing -- when get a grievance, we're going to schedule it. So all these ones that are waiting for resolution conference haven't been scheduled. But then, once they get scheduled, there could be a motion to dismiss and they could be untimely or not in our jurisdiction or...

Mark Evans: Yes.

Stephanie Canter: So they should be scheduled so that the agency or the -- or so that the agencies will want to submit their motions to dismiss.

Mark Evans: Yes, I do not...

Stephanie Canter: Or are we going to do the resolution conference first, and then schedule it?

Turessa Russell: What does the code say? We're bound by legislative guidance here. What does that guidance in writing say?

Mark Evans: I wouldn't say that there was a lot...

Tracy DuPree: There's not a lot of it.

Mark Evans:...of guidance, because I think what happened is the practice was if a resolution conference was requested, we didn't schedule until the resolution conference was concluded. I know that there were times when the former Chair might have scheduled things in order to encourage a resolution conference and had done things the other way too, might not have scheduled them to encourage a resolution conferences.

Stephanie Canter: But isn't that what our motion just was that when we receive a grievance we're going to schedule it for the next available slot?

Mark Evans: I would say that that motion gave us the latitude...

Mandy Payette: Well, and I think in the discussion, the latitude for the next available appointment allows the Committee to have all the information. Like Carrie pointed out, Mark may be conflicted out of one of them or it may come up that Carrie Lee sends it out and, Stephanie, you say, "Oh, I can't hear this one. I haven't, you know, I know knowledge of this grievance." So it would be the next available, once we get the Committee together. So I think there's that latitude of time. It's not just we're going to get it and we're going to set it out for this date.

Mark Evans: Yes, I think we've always tried to let the resolution conference go forward and not worrying about scheduling, because they're still trying to work it out. I think that motion still allows for that.

Stephanie Canter: Yes. I agree.

Tracy DuPree: Yes.

Stephanie Canter: What he had asked for was that there be no resolution conference until after the motion to dismiss. But we're not going to get a motion to dismiss if we don't schedule it.

Mark Evans: Okay.

Stephanie Canter: You see what I'm saying? If you don't schedule the hearing, the agency can't submit a motion to dismiss.

Carrie Parker: This is Carrie Parker. The way it's currently done, when a grievance is received, there's some kind of an acknowledgement letter. We've received your grievance. It will be set for hearing. And any motion to dismiss is due, I think it's 10 days from the date of this letter. So the way it is now, there's not a -- it's not scheduled with, you know, a date certain...

Stephanie Canter: So we're telling them that we're going to schedule them, but we're not actually scheduling them, taking any motions?

Carrie Parker: Right, because we don't know what it's going to be yet. What the date will be.

Stephanie Canter: Okay.

Mark Evans: So I guess the question to me is to talk about what exactly the Committee's feeling is on what both Kareen and Rob brought up. What comes first? Should we refuse to schedule the hearing until they have a resolution conference? Or should we say, okay, there's a motion to dismiss, the resolution conference is on hold, before we decide we have jurisdiction?

Stephanie Canter: I have some discussion on that. Well, the resolution conferences only go if the employee wants it to go.

Mandy Payette: No.

Mark Evans: No. It can be requested by either side and both parties have to attend. So there have been times where the agency has requested the resolution conference and the employee has to go.

Stephanie Canter: But it's not a required part. If someone doesn't ask for it then we're not going to say you have to have it.

Mark Evans: Right. We, as the EMC, cannot say you have a resolution conference. We don't have that authority, even though we might sometimes want to. Okay.

Turessa Russell: Well, I remember several hearings where the employee has not been represented and a good portion of what they want is to get their side of what's going on heard. From having some experience on the Committee, yes, it may be a little inconvenient for the agency to go to the resolution conference, but what is wrong with going to the conference to

try to resolve the issues before you even come to the Committee? If you're trying to solve the problem...

Stephanie Canter: What's the harm in it?

Turessa Russell:...yes, what's the harm in having a meeting to say let's find a solution to the situation here. Instead of saying, well, they don't have jurisdiction. We don't want to solve this problem. I'm sorry, but that's what I'm hearing.

Mandy Payette: And I have some discussion on that. I think the resolution is tied to the EMC, in that, you know, as part of that EMC or the grievance process is to have that resolution to hopefully resolve it before it goes to a hearing. I think that if we're going to have a mini-hearing on whether or not it's in our jurisdiction or timely, and that's, you know, the request for the motion to dismiss, it makes sense not to have them do the resolution, because maybe it's not in our jurisdiction. Maybe we find out it's supposed to be through sexual harassment. Well, the resolution conference isn't going to help them with that, because there's another avenue they have to go do to be able to have that heard. So I don't think it's a bad idea that we have that hearing first. And if the Committee says, no, we're not going to dismiss this, we're going to have it heard, then they have the option to do the resolution conference before the final hearing. Does that make sense?

Stephanie Canter: Not necessarily. Because I see what you're saying about the resolution conference being tied to us, but I also think that even if it's not something within our jurisdiction, if we can bring the employee and the agency together and they can resolve it, then to me it's going to make things better for their future working relationship, even if it's not in our jurisdiction. And that's -- I think that is a good thing.

Mandy Payette: You know what, I think maybe we should have somebody, either Michelle or Denise, weigh in, since they're the ones who actually handle the resolution conference and whether or not it's something that they think that they should be doing or not, because we're telling them that we want them to do it and maybe they're going to say, they don't have -- maybe they don't want to. So...

Michelle Garton: Yes. Michelle Garton, for the record. I'm with Human Resource Management. Which one is it? (Inaudible) blocked back there. Okay. The way I interpret the regulations is to say once a grievance has been submitted (inaudible) the employee is able to request a resolution conference. Now, of course, that's regulation. But I tend to agree with Stephanie in that -- and this is pretty much how our office feels, is that even if the grievance is dismissed, motion to dismiss is granted, and then it's still an employee-relations issue. There's often times where an employee is not able to get the attention of their administrator or director until that resolution conference.

And theoretically, it should be in a different venue if the agency HR folks are tracking them, which they do get notified at every step, then that should have been handled way before getting all the way to step four.

Mark Evans: I have a question. And have you conducted the resolution conferences, or at least you know what goes on?

Michelle Garton: Yes.

Mark Evans: Does that jurisdiction issue come up ever? I mean, is it, you know, I understand what you're talking about, but this is more of a sexual harassment thing?

Michelle Garton: Never.

Mark Evans: Okay. Never.

Allison Wall: What about -- this is Allison Wall, for the record. I guess, kind of along the lines of what Turessa was saying that if it's a timeliness issue -- so they submitted after 25 days, there was still an issue that occurred. So would your program still be interested in helping that employee and that agency resolve it, even if, for us, it's out of our jurisdiction? I mean, is that...and maybe I'm confused.

Mandy Payette: I understand what you guys are saying and I'm not saying that the resolution conference isn't a good idea. I guess I go back to can you make it mandatory if it's not a grievance. If we say that we're not going to hear the grievance, can you then make it mandatory?

Allison Wall: But is it -- oh, because it's being mandatory for the opposite side.

Tracy DuPree: Yes.

Mandy Payette: Right. So I think that's where I was looking at it.

Michelle Garton: But isn't it my understanding that even -- that all decisions will be made by the Committee related to step four grievances now?

Mandy Payette: If there's a motion to dismiss though, we're actually going to hear it to see if it's something that should be in the grievance process, where before...

Michelle Garton: But that's still a decision. That's my concern. Is that a final decision?

Mark Evans: I think it's going to be considered by the court as a final decision.

Michelle Weyland: Which is why we need to do it as a Committee.

Mark Evans: Yes.

Sherri Thompson: Can I ask a question? This is Sherri in Las Vegas. This is for Michelle. Michelle, as the resolution committee, do you guys have more latitude than the EMC does as far as what you're able to have jurisdiction over?

Michelle Garton: No.

Sherri Thompson: No?

Michelle Garton: There's no jurisdiction, per se. Really, we have a coordinator, a facilitator there, as well as a trained mediator. They're not mediating. I'm sorry. There's a coordinator and a facilitator. The facilitator is trained in mediation. They're a trained mediator. But they are less mediator in this capacity, more facilitator. And that's to get the conversation going, keep the conversation going, keep it revolving around a potential solution, you know, a mutually agreed upon resolution. And it's not so much that the resolution conference committee or our staff or whatever have any jurisdiction, it's pretty much that's why we require or request the highest decision maker from the agency there, because that's actually the person that would be deciding what they're willing to, you know, accept from the employee, like a schedule change or, you know, something within their agency. They need to be able to offer up that, you know, and that's why it's the highest decision maker. So it's not, you know actual testimony.

Sherri Thompson: But my question, I guess for further clarification.

Michelle Garton: Yes.

Sherri Thompson: But you're only allowed to address certain things. You can't address just anything and everything, right?

Michelle Garton: So far.

Sherri Thompson: I mean, like sexual harassment; would you guys handle sexual harassment...

Michelle Garton: No.

Sherri Thompson: Or do you refer that out?

Michelle Garton: We would refer that out, but again, I would hope the agencies would have done that prior.

Sherri Thompson: Exactly.

Michelle Garton: Much prior.

Sherri Thompson: That's my point. Okay.

Michelle Garton: And I think they do.

Sherri Thompson: And how many (inaudible) cases do we really have?

Michelle Garton: How many what?

Sherri Thompson: I mean, we're talking about this. Do we even have enough -- is it even worth having...

Stephanie Canter: Well, I know, but do those even come to us? Do they even get to this level? How often do we get sexual harassment submitted to level four of the EMC?

Mark Evans: I think what we get...

Mandy Payette: I've seen some where we've sent out letters that say you're in the wrong place.

Mark Evans: And a lot of times what happens is it's not cut-and-dried. I got a written warning, but my written warning is because I'm being discriminated against based on my race. So we tend to look at the written warning, not the racial issue.

Mandy Payette: Right. And I think that we can -- actually, Carrie and I were just looking at this, and it says that "Once an employee submits a request for consideration of the grievance by the Committee, pursuant to NAC, the employee or the highest administrator at that time can request a resolution conference." So I think it's a moot issue, because once we receive a request for a grievance, they automatically have the right to request a resolution conference. So I don't think we have any way to say that they can't do it before.

Mark Evans: Okay.

Mandy Payette: So, based on that, I -- right Carrie? I would say that they -- once they submit it to the EMC for consideration of a grievance, they automatically, at that point, can request a resolution conference...

Mark Evans: Okay. Kimberley?

Kimberley King: Kimberley King, Human Resources Manager for NDOT, for the record. I have a couple grievances that I think might assist you as you work through this process. I have four to five grievances right now from two employees that are claiming sexual harassment discrimination. We notice that immediately at step one. We moved it over to the Sexual Harassment Investigation Unit. In the past, the EMC coordinator would have kicked it out of the grievance process. But because of the new decision, they said, "No, we can't kick it out of the grievance process. It's going to stay in the grievance process." The Sexual Harassment Investigation Unit did the investigation, gave us the findings. We now are continuing to work through the grievance process, where it's still the same dispute. We have responded, but now they're asking us if we want a resolution conference. So that's just the situation that seems -- that's come up and it sounds like that's what you're asking about.

Stephanie Canter: So we're still going through the grievance process, even though it's been referred over to sexual harassment?

Kimberley King: Yes. And now we're being asked to go to a resolution conference.

Allison Wall: So that's an example of why we dismiss it.

Mandy Payette: It's an example of why the district court should not get involved.

Claudia Stieber: This is Claudia. In that particular example, couldn't the agency submit, now, a request to dismiss based upon this has already been acted upon by another body?

Tracy DuPree: Yes.

Mark Evans: Right, but...

Mandy Payette: But the problem is that before, we used to be able, as the Chair or the Co-Chair, or the Vice-Chair, we were allowed to make those decisions before it came before the Committee.

Claudia Stieber: Right.

Mandy Payette: And we would send a letter saying, you know, we're denying your grievance because we've heard this before. It's not timely. It's not the right jurisdiction. What happened is now -- which is why we're having this discussion -- is because one of those went to the district court and they said, "No, you are going to allow him to have his day in court." So...

Claudia Stieber: But can we just set it for one of our -- I hate to call it a preliminary hearing.

Mandy Payette: That's basically what it is. Bring both parties forward...

Mark Evans: But I think the question now is, in her case, where she's already gone through that process, it gets to the question of does the resolution conference happen after the motion to dismiss is heard and we're not sure we can do that based on that?

Mandy Payette: Yes, based on this. And I think when this was, you know, when this was enacted, it was based on the fact that we had the right to say -- we had jurisdiction to say we're not going to hear it.

Mark Evans: It was based -- yes.

Mandy Payette: And it was based on the ones that, so...

Mark Evans: They felt like the EMC wasn't hearing enough.

Mandy Payette: Right. Right.

Kimberley King: For the record, Kimberley King, again. But this is why Rob came up and asked for -- and if it can't be heard and you can't resolve it, why are we doing the resolution conference.

Mandy Payette: And I agree with what you said before.

Kimberley King: So, (inaudible) before.

Mandy Payette: Right, I agree with that. And it looks like, in order for us to do that, we're going to have to have language changed...

Tracy DuPree: Yes.

Mandy Payette:...within the NAC, because we have an NAC that says once they've requested it, they then request a resolution conference. So in order for us to -- we're going to have to have some language changed.

Kimberley King: And I guess the question would be can they request this? Do we have the opportunity to get that decision from the EMC before we follow through with it?

Donya Deleon: Or couldn't they provide what they've already received from the other body that ruled on it or whatever and provide that at the resolution conference?

Mark Evans: Well, some of it, I don't know if they can (inaudible).

Carrie Parker: I think it's confidential.

Stephanie Canter: In this example that we're talking about, what level of a grievance are they at? Has it been submitted to the EMC?

Kimberley King: At step one is when we told them that it needed to go over to the Sexual Harassment/Discrimination Unit. When we got it back, we went to step three and we responded back. They had their closure letter from the complaint investigation. But we also responded at step three of the grievance, basically saying what we said. And now, like I said, they've put it up to step four. It's been accepted and now we're being asked to do the resolution conference.

Mark Evans: So the employee did...

Stephanie Canter: But once it comes to step -- okay, once it comes to step four that comes to us. We send out that letter, right, Carrie Parker, that says, we got your grievance. You're going to be scheduled for a hearing. And then the agency can submit their motion to dismiss, right?

Carrie Parker: Yes. And I think the issue is what comes next in the order of...

Stephanie Canter: Well, I think they kind of have to both go together. I mean, I think the motion to dismiss gets done before the resolution conference gets done. And if we find that it's not within our jurisdiction, then the resolution conference shouldn't happen.

Carrie Parker: Well, so, I think that's the question from NDOT, if I'm understanding correctly. If there's a request for a resolution conference, agency doesn't want to go. Agency has a pending motion to dismiss. What happens? Do they have to wait for the motion to -- or can they go and argue their motion to dismiss before the committee or are they required to go to the resolution conference, when they believe that there's no jurisdiction? I think that's the question presented.

Mandy Payette: Correct. And I think that's where I was going, was that we should wait. But then it kind of turned around that everybody said we should have the resolution. And this says that we should have the resolution conference. So I was of the belief of them and Karen that there should be no reason to have a resolution, if we're waiting for motion to dismiss, but then the Committee kind of felt that we should let everybody have a resolution conference. And I

think this is a perfect example of why, maybe it shouldn't be set right away when there's a motion to dismiss on a grievance.

Stephanie Canter: I think we should just schedule everything for a jurisdictional hearing and make that determination. And the ones that have our jurisdiction, they can have their resolution conference, and the ones that don't, then you go elsewhere.

Tracy DuPree: Well (inaudible) do that.

Stephanie Canter: Because we're kind of tying up the people in our system. We're kind of tying everybody up there just to decide whether or not we're going to hear them, when we can just make the decision and then move forward with the ones that we move forward with.

Mark Evans: Okay. So here's the thing. We've already decided we're going to do it one way.

Mandy Payette: I think at this point, because it's such a new process, why don't we stay with the way we have set it and see how that works before we go into -- because I think we're going to have to tweak this as we go through. But I think if we keep second-guessing everything that we're doing, we're going to be here all night.

Mark Evans: Well, and I can see Stephanie's point. But, on the other hand, then we're doing two hearings on everything, potentially.

Mandy Payette: Potentially, yes.

Stephanie Canter: But the first one -- the first hearing really is like a 15-minute hearing. And we could even do that -- couldn't we do them over the phone with the person? Not necessarily have them come in?

Mark Evans: We've still got the 21-day issue. We've still got the full Committee.

Michelle Weyland: We've got 21 days to schedule it. It's going to have to be a full Committee.

Allison Wall: And the agencies, I think, are still going to need to bring in their legal counsel. And, you know, it's going to double up work.

Mark Evans: Well, not if we move toward what Kareen was saying. I mean, if we got away - - because, I mean, I'm totally in agreement, let's get away from all this legal crap and then maybe the lawyers stop showing up and I think it would be better for everyone. That's my opinion.

Tracy DuPree: Except for Carrie.

Mark Evans: I exclude her because she's our lawyer.

Tracy DuPree: She's on our side.

Mark Evans: She's on our side.

Tracy DuPree: And we welcome her to all meetings.

Mark Evans: Yes. We always want her there. But we don't need outside people, because it just makes it worse. So I don't know. I don't know if we're ready to really decide how to handle resolution conferences. But I think what I'm hearing from our attorney is we can't wait. We can't do the jurisdiction before...

Mandy Payette: Before we make a determination on that, can we put it as an agenda item, so we can do some research on the resolution conference and maybe talk with HR about some resolutions to that?

Mark Evans: I think a person that was a member of this Committee could make such a motion.

Stephanie Canter: So moved.

Mandy Payette: That was my motion.

MOTION: I would move to make a motion to put on the next agenda for the Committee to meet to discuss the resolution conference process within the grievance process.

BY: Mandy Payette

SECOND: Michelle Weyland

VOTE: Vote was unanimous.

Mark Evans: Okay.

Michelle Weyland: Michelle Weyland, I second.

Mark Evans: Any discussion? All in favor?

Group: Aye.

Mark Evans: Any opposed? We're unanimous again. Kareen?

Kareen Masters: The only thing I wanted to comment on, and this is obviously something -- a question for Carrie Parker. But I guess my reading of the regulation, just because the employee requests a resolution conference after it's been submitted to the EMC, I don't think that means it needs to be scheduled prior to the EMC hearing a motion to dismiss. I mean, to me it's just, okay, you've gone on record, because they have to file it no less than 15 working days before that EMC date. So they've met their timeliness standard for requesting the resolution conference, but I don't think that means that it has to take place before the EMC hears a motion to dismiss. But I'm not the attorney, so I would just hope as part of your research that maybe that's something that can be explored more.

Carrie Parker: Okay.

Mark Evans: Okay.

Kareen Masters: And then the only other thing, I just wanted to comment -- I wanted to clear up the misconception that resolution conferences are always requested because people haven't met with the employee at lower levels. Oftentimes, there have been extensive meetings at level one, level two, and level three, and it's still going to a resolution conference. So, you know, I just want people to understand that sometimes that's the situation as well. It's not just people haven't been trying to work out the issue at lower levels. Thank you.

MOTION: I would like to make a motion that we investigate the idea of this simplified form, with the assistance of the DHRM staff.

BY: Mark Evans

SECOND: Tracy DuPree

VOTE: Vote was unanimous.

Mark Evans: Thank you. I had a point. Oh, I would like to make a motion that we investigate the idea of this simplified form, with the assistance of the DHRM staff.

Tracy DuPree: I second that motion.

Mark Evans: Okay. Any discussion?

Turessa Russell: We can't hear what you're saying now when you're facing away from the phone.

Mark Evans: I said I would like to make a motion -- can you hear me now -- that we investigate the possibility of establishing a simplified form for the motion to dismiss process with the assistance of DHRM staff.

Tracy DuPree: And I seconded that motion.

Mark Evans: So discussion on that?

Carrie Parker: Do you mean a form for the motion to dismiss or a form at the beginning of the grievance process?

Mark Evans: I think that it would be more appropriate for me to address the motion to dismiss process, because I come in at step four. Certainly the wise people at DHRM could take it further and we could recommend that as well.

Tracy DuPree: Yes.

Stephanie Canter: But wouldn't -- we'd have to be really careful, because we can't -- you can't solicit motions to dismiss.

Turessa Russell: But if there's a simplified form out there that they have access to that we can accept, that's not a solicitation. That's having a form available.

Tracy DuPree: It's informational.

Stephanie Canter: But if we give them a form that says motion to dismiss, you're putting that idea in their mind, and that could be crossing the line.

Claudia Stieber: I think that's kind of like saying, just because we give people access to a grievance form, we're soliciting them to grieve things. We could...

Mark Evans: Well, and I think we could use language other than motion to dismiss because, again, we want to get away from the legal thing. And that was kind of Kareen's suggestion is we get away from that legal...

Mandy Payette: Yes, it was basically is this timely? Is this the right...

Mark Evans: Determining jurisdiction of the grievance.

Stephanie Canter: Right.

Carrie Parker: Can the EMC do what I ask?

Stephanie Canter: Right.

Mark Evans: Yes. Is the EMC the right answer for me?

Stephanie Canter: Yes, I like that. Dummies guide for filing a grievance -- grievances.

Mark Evans: Yes. Okay. So that was my motion. There was a second, right?

Tracy DuPree: Yes. I seconded it, twice.

Mark Evans: Any more discussion? All those in favor?

Group: Aye.

Mark Evans: Any opposed? Okay. It's 4:30. I think there's probably more procedures we want to discuss, but I think we're going to need to wait to have another meeting. I would put maybe in people's mind that maybe we want to come up, if this doesn't violate Open Meeting Law rules, maybe we want to come up with even a subcommittee that could be composed of - - maybe include staff, I don't care if it included representatives from other areas. I don't know. But it's something to think about, if we wanted to have some sort of committee work on these, because if we do this as a full Committee -- it's going to be like this for like -- it will be a long process and we will die. So, thought I'd just put that at people's mind.

Item 7, specifically what we wanted to bring up here was the idea of doing a bill draft request to specifically exempt us from 233B. If we were exempted from 233B, we would have the latitude to do things how the EMC used to do it. We wouldn't need a full Committee to make those decisions necessarily. Now, it could be we go through this process and we decide we do like it better. We just don't have enough time, but I wanted to bring that up at least for discussion.

Mandy Payette: Yes, this was brought up at a hearing, where the EMC's asked Human Resources to look into amending the language for us on this. So I think there might be already some legwork of this already being done.

Mark Evans: Okay.

Mandy Payette: So we might want to check with them. If I remember correctly, it was Shelly Blotter at the hearing that we asked...

Tracy DuPree: Yes.

Mandy Payette:...for them to do some looking into it at least. So they might have some legwork for it already.

Mark Evans: Okay.

Carrie Parker: If my -- this is Carrie Parker. If my memory serves me, at the time that that meeting occurred and that direction was given, the court hadn't made this decision yet.

Mandy Payette: Yes.

Carrie Parker: And I think that DHRM had noticed a public workshop for regulation change that would have said the EMC was not subject to judicial review. But in light of the court decision, it was decided that they should not try to adopt a regulation that conflicts with a court decision.

Mark Evans: A regulation?

Carrie Parker: And that it would be better to have a law. Exactly.

Mark Evans: So to do a statute?

Tracy DuPree: (Inaudible) going to 233B.

Carrie Parker: Right. So we would have to do a BDR instead of an NAC.

Mark Evans: Okay. So the concept itself of getting the EMC exempt from 233B. Committee discussion on that?

Claudia Stieber: I have some comments. I wanted to kind of...

Stephanie Canter: I think we should table it until we've done it this way for a while.

Mark Evans: Okay.

Stephanie Canter: Because if we like it, we might want to leave it.

Mark Evans: Okay. Claudia?

Claudia Stieber: This is Claudia. I want to echo what Mark said earlier. And I know I've said this in previous meetings, too. My big fear is that we're moving further and further away from this being what the EMC was created as and, you know, that was this layman's forum where any employee could come forward and have other layman employees and supervisors look at the matter and discuss it and really to bring it all together.

I think we should move forward on a bill draft exempting us, because if we allow, you know, ourselves to now be under the scrutiny of the courts and they're going to be second-guessing us, I think we're just moving another step away from what this whole process was originally meant to be.

Mandy Payette: I agree. And I'll add on to that. I think if we don't look at exempting ourselves from this, we're pushing our employees to seek legal representation instead of having a discussion in front of a committee to say this is why I feel like I've been grieved, they're going to be forced to go out and seek legal advice. And I don't -- I agree, I don't think that was the intent of the EMC Committee when it was created.

Mark Evans: And I'll tell you, I feel like when the employee gets -- if they get an association member as a representative, those association members, they know the regulations, they're on point. I think that, you know, there's been exceptions, but certainly they've had very good representation...

Stephanie Canter: Yes.

Mark Evans:...for the people that stick around and know what they're talking about. But a lot of times the employees come in with a lawyer that I don't know what they're paying, but probably a lot, and they come up with some sort of legal argument that has nothing to do with the purpose of the regulations. And, it's like, you just waste my time. Drive off in your BMW. You're just (inaudible). And I just think it's a real disservice to the employee. So, you know, that's why I harp on some of the lawyers, Carrie always excluded.

Stephanie Canter: The only thing is, okay, like with that one that even brought this about to begin with, the decision was made by one person that we wouldn't hear that case. And if you're submitting a grievance to be reviewed by your peers and to get the opinion of your peers, then why -- even if we're not subject to 233B, I still don't think we should go back to the old way where one person reviews it and decides if the EMC's going to hear it or not. I still think it should be looked at by several members of the EMC, and that decision be made. Because that's why you're submitting the grievance is because you want to be heard. And if only one person's hearing you and making that decision, whether to hear it or not to hear it, sometimes that could be even more damaging.

Mandy Payette: Yes, but actually I think those are two separate issues. I don't think us not being part of 233B is going to change our processes. It just makes us to where we're not in that legal forum.

MOTION: I make a motion that we look at a BDR to exclude us from 233B and that we create procedures that allow the EMC to -- well, let me just do the first part first. So that we do a BDR to exclude ourselves from 233B.

BY: Stephanie Canter

SECOND: Mandy Payette
VOTE: Vote was unanimous.

Mark Evans: Okay, is there a second?

Mandy Payette: I'll second that.

Tracy DuPree: Yes, well it's, you know, I'll vote on anything.

Mark Evans: Is there a discussion? All those in favor?

Group: Aye.

Mark Evans: Any opposed? Yet another unanimous decision.

Tracy DuPree: That's because that's the way we work it around here.

Mark Evans: Right. And it's 4:35. All right. And then, Stephanie, did you have more?

Stephanie Canter: Well, I just think -- I think the whole reason that we got to this point in being involved in 233B was because that guy wanted a hearing. And it was the fair jurisdiction. And one person made the decision not to hear it. And I don't think that -- I understand why the decision was made. I don't know if I agree or disagree with it, because to me the forum of the EMC was created to kind of give the employee a voice. And even though he may not have agreed with what our decision was ultimately, at least he can say he had his day.

Mark Evans: Yes.

Stephanie Canter: I just think that before we...

Mark Evans: I don't disagree with that at all.

Stephanie Canter: I think moving forward we should just be cautious when we tell people that they're not going to go before us, that it's not just one person making that determination. That kind of everybody has -- or at least a quorum had some say in that.

Claudia Stieber: Well, I thought my earlier motion covered that.

Mark Evans: Right. I think what she's afraid of is if we -- and based on what I said earlier, I could see how she did hear that, is basically if we were exempted from 233B, then we could go back to the old way that we did it. And she's saying, I don't want to do that. I think more people need to look at that to determine if it has jurisdiction.

Stephanie Canter: Yes.

Mark Evans: But it could be that if we were exempt from 233B, maybe we could find a way to do that more expeditiously. Because I don't disagree with...

Stephanie Canter: On our terms.

Mark Evans: Yes. I don't disagree with the idea of having more people look at that to determine if it's discrimination or if we have jurisdiction.

Tracy DuPree: We don't want to get stuck in the time frames of the legal framework of 233, if we don't...

Mark Evans: Right. And does it need to be a full hearing or could it just be the Committee sitting around, or not even the entire Committee sitting around and deciding, okay, yes we do have jurisdiction or, no, we don't? I mean, I think there's some middle-ground that would help expedite it.

Stephanie Canter: Yes.

Mark Evans: And perhaps make it less legalistic.

Carrie Parker: So this is Carrie Parker. We're dealing with two different statutes and two different chapters. NRS 284.073 is the one that says when the Committee adjusts a grievance, there must be an equal number of employee and management members. And NRS 233B is called the Administrative Procedure Act and it has in it a section about how you adopt regulations. And it also has a section about how do you conduct a contested case. And, you know, you'll have this type of evidence. You know, it'll be recorded. You'll have testimony. You'll do all these things. You have this many days until you file a petition for judicial review. So it's a very formal process that almost screams for lawyers to be present. So that's the different issues that we're talking about.

Mark Evans: Okay.

Carrie Parker: I think that the equal number of management and employee members is in the EMC statute, and that's pretty much here to stay.

Mark Evans: Yes, and I don't think we necessarily have a -- anyone has a problem with that.

Carrie Parker: 233B is...

Mark Evans: Okay. Well, I think we could...

Carrie Parker: We have to have...

Turessa Russell: Even if it's just five minutes.

Tracy DuPree: I move to adjourn.

Carrie Parker: No, we have to have public comment.

Mark Evans: Oh.

Mark Evans: Can she just go?

Turessa Russell: Can't she just go?

Carrie Parker: She can go.

Mark Evans: You could just go. Because what we're going to do is we're going to have public comment and then we're going to adjourn, as long as we have a quorum, whatever that is. Okay. Other public comment about this issue or any other issue? All right. So then I'll just open up to second public comment, because I'm all about public comment. Any public comment anywhere? Alys? All right. Adjournment. Is there a motion to adjourn?

MOTION: I move to adjourn, Mr. Chair.

BY: Tracy DuPree

SECOND: Michelle Weyland

VOTE: Vote was unanimous.

Tracy DuPree: Move to adjourn.

Mark Evans: Tracy...

Michelle Weyland: Second.

Mark Evans: Tracy and Michelle, all in favor, Aye.

Group: Aye.

Mark Evans: Any opposed? Thank you.