

1. Call to Order

Chair Puglisi called the meeting to order at approximately 9:00 am.

2. Public Comment

There was no public comment in the North or the South.

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

Chair Puglisi opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

Chair Puglisi requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.

BY: Member Thompson

SECOND: Member Russell

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

5. Discussion and possible action related to Grievance #6748 Detelin Georgiev and Grievance #6773 Domingo Quintanilla, Department of Corrections – Action Item

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated agenda item #5 was similar to agenda item #9, grievance #6773 and were both related to shift bid and the seniority list.

Chair Puglisi asked if there was opposition to discussing the grievances together, there was none.

Chair Puglisi stated during the EMC meeting held August 22, 2019, the Committee did hear grievances related to similar issues regarding the seniority list and shift bid.

Chair Puglisi stated ultimately that grievance was withdrawn and therefore, no decision was made by the Committee.

Member Beigel asked for clarification if there was a hearing or if the grievance was agendized for discussion.

Chair Puglisi stated there was a hearing, however, the parties came to an agreement during a recess and the grievant withdrew the grievance.

Chair Puglisi stated the agency has a revised Administrative Regulation (AR) and sent a memo on December 11, 2018 that stated in the event of

the same date seniority will be awarded by the lower employee ID number.

Chair Puglisi stated the agency since changed it to say it would be based on lot or a draw.

Member Beigel stated it was NAC 284.632 layoffs, by lot.

Chair Puglisi stated the agency is following the regulation and the administrative code does not address how ties in seniority are addressed, only how seniority is calculated.

Chair Puglisi stated if several people have the same seniority date, then the agency has opted to use the same criteria as prioritizing a layoff.

Chair Puglisi stated he did not think it would be any different if the agency said they were going to draw straws, or pick names out of a hat, however, if that is what the agency decided to do, they have the right to do that as long as that is hat the procedure is and the agency is following that procedure.

Member Beigel stated she agreed however, she wondered how the agency went from the December 2018 memo to the other and that she would suggest these two grievances be moved forward to hearing.

Member Russell stated she was also inclined to move these grievances to hearing to ensure that the policies are being followed consistently.

Member Russell stated there may be an educational process for the agency and the employees' during that hearing.

Member Thompson stated she agreed with moving the grievances to hearing.

Member Keith stated she agreed with moving the grievance to hearing so the Committee could hear the entire story from both sides in order to make a decision.

Member Beigel asked if the grievances could be listed together.

Chair Puglisi suggested if the schedule could accommodate it, have the grievances scheduled together.

Mr. Whitney stated as long as the specific grievance numbers are stated, there is no reason they cannot be combined into one motion and include the suggestion to schedule them together if possible.

Member Beigel moved that grievance #6748 and grievance #6773 move forward for hearing and, if possible, be heard together or scheduled on the same day.

Member Russell seconded the motion.

Chair Puglisi asked if there was any discussion, there was none.

MOTION: Moved that grievance #6748 and grievance #6773 move forward for hearing and, if possible, be heard together or scheduled on the same day.

BY: Member Beigel

SECOND: Member Russell

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

6. Discussion and possible action related to Grievance #6868 and Grievance #6874 Detelin Georgiev, Department of Corrections – Action Item

Chair Puglisi opened the Committee for discussion and asked if there was opposition to discussing the grievances together, there was none.

Chair Puglisi stated in reviewing the grievances, the employee was requesting to have management investigated, disciplined or removed.

Chair Puglisi stated he did not see where the employee filing the grievances suffered an injustice, it seemed like a series of disagreements amongst employees.

Member Russell stated she was not in complete agreement and saw issues with higher management potentially not holding themselves to the same standard they would hold classified staff to.

Chair Puglisi stated in reference to the EMC's authority, what would the Committee be able to do with that scenario.

Chair Puglisi stated the Committee could not order the agency to investigate, discipline or remove anyone.

Member Russell stated she agreed and acknowledged the Committee could not order discipline, but the Committee could document for the record if there was a violation.

Member Thompson stated she agreed with Chair Puglisi the Committee has no authority over these grievances and cannot mandate the Attorney Generals (AG's) office to investigate.

Member Thompson stated there is a process the grievant could initiate through the AG's office to request an investigation.

Member DuPree stated the Department of Corrections Inspector General could investigate the issue.

Member DuPree stated he still felt the EMC was not the proper venue.

Chair Puglisi stated there were issues in the grievances where the employee could have used the whistleblower policy or the Equal Employment Opportunity (EEO) office.

Chair Puglisi stated the EMC could not grant any relief and if the Committee were to hear these, it could potentially end up at a standstill.

Member DuPree motioned to deny hearing for grievances #6868 and #6874 as the EMC lacks jurisdiction and the authority to grant relief.

Member Thompson seconded the motion.

Member Russell asked if a referral to another venue could be included in the motion regarding the hostile work environment.

Mr. Whitney stated the Committee could reference NAC 284.1696 relief may be provided in another venue.

Member Keith stated a hostile work environment has to be based on a protected class and she did not see that was included in the grievances.

Member Keith stated the word 'hostile' itself could mean aggressive but did not see in grievance #6874 how that referred to a protected class but seemed more of an angry work environment.

Member Russell stated if the timeframe for another venue had passed, the Committee should not suggest it in the motion.

Member Keith stated Member DuPree mentioned the Inspector General and asked if the Committee could make the suggestion that the Inspector General review the grievances.

Member Thompson asked if the Office of the Inspector General was part of the AG's office.

Chair Puglisi stated they were separate.

Mr. Whitney stated the AG's office requires a complaint form to be filled out and they will decide internally whether to proceed.

Mr. Whitney stated he was unsure if relief would be provided but the employee could file but the Committee could not order that be done.

Member DuPree stated he would like to keep the original motion.

Chair Puglisi asked if there was any discussion

MOTION: Moved to deny hearing for grievances #6868 and #6874 as the EMC lacks jurisdiction and the authority to grant relief.
BY: Member DuPree
SECOND: Member Thompson
VOTE: The vote was unanimous in favor of the motion.

7. Discussion and possible action related to Grievance #6757 James Gaida, Department of Corrections – Action Item

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated this was an exempt post and the Committee has seen this before where the AR stated the agency could exempt a certain number of posts from shift bid, they have to get it approved and the particular position the grievant was seeking was one of the exempt posts.

Chair Puglisi stated he did not have a chance to search the database and find a similar decision, even though the Committee has heard this issue before.

Member Russell stated she was unsure if the grievance related strictly to shift bid but thought it also brings into account identifying different posts.

Member Russell stated she did not think the Committee had heard a significantly similar issue.

Member Keith stated she felt the agency has the right to run it as they see fit and asked if NDOC is stating there is a critical labor shortage and they needed to fill that position, can the Committee actually recommend how to do that.

Chair Puglisi stated the agency regulation did state, they reserve the right to modify the shift bid process and available posts as needed to ensure the safety and security of the facility during times of critical labor shortages.

Chair Puglisi stated the regulation also stated the agency may exclude up to 12.5% of the posts from the bid process for the purpose of shift rotation and training of correctional officer trainees.

Chair Puglisi stated that 12.5% limit did not apply to the warden exempt positions.

Chair Puglisi stated over the course of the last year and a half, NDOC has made significant advancements in updating their regulations to clarify and close the loop holes.

Chair Puglisi stated he could not point to a specific decision, however,

the Committee has heard this issue before and denied the grievance.

Member Russell asked if by heard it before, was the Chair referring to the annual shift bid process or filling vacancies.

Member Russell stated that on page 2 of 6, under Lt. Henley's response that the graveyard shift was not vacant but according to AR 301 vacant positions shall be filled by a seniority bid throughout the year.

Chair Puglisi stated the Committee has heard grievances on almost every facet of the shift bid process, but he was specifically pointing to the positions that were exempt from the shift bid process.

Chair Puglisi stated he had also noted the annual shift bid process had happened and the issues in this grievance were more than likely moot.

Chair Puglisi stated in reference to the section Member Russell pointed out, the grievant stated he would be willing to rescind the grievance if the post was placed for continual bid and if the institution has opted not to do that, it appeared the agency was within their rights to do so.

Chair Puglisi stated the relief being sought by the grievant was for the Committee to instruct the agency to put the position up for continual shift bid and he did not the the Committee has the authority to do so.

Member Russell stated she was inclined to move the grievance to hearing as there were questions the Committee did not have answers for and it would behove the Committee to have more information before making a decision.

Chair Puglisi stated in the email response, the agency would have to move someone more tenured to the position.

Chair Puglisi stated Warden Baca pointed out the same section regarding modifying the shift bid process and if they were pointing to that regulation, and that is what is stated in the regulation and they are following it, the Committee may not have jurisdiction.

Member Beigel asked if the Committee was looking at AR 301.01 or AR 301.04 or both.

Member Beigel stated both are referenced in the grievance and the email referenced AR 301.01 and the respolution was to follow AR 301.04 and the response was, 'it was filled according to AR 301.04'.

Member Beigel asked if the the prior decisions the Committee made had been based on AR 301.01 or AR 301.04.

Chair Puglisi stated the he thought AR 301.04 applied to the person the agency used to fill the position and the appointing authority retains the

right to change an officers shift, post or regular day off when officers under investigation or actions related to an assignment or alleged misconduct makes the assignment of the officer inappropriate; management may assign an officer to a shift, post or regular day off until investigations are concluded and the officer is exonerated; management may temporarily reassign an officer to cover a post until the officer under investigation is exonerated; in terms of the post or the position is filled permanently.

Member Russell stated she did not see anything regarding an investigation.

Chair Puglisi stated it looked to him like the agency said the position was filled according to the AR as the agency could not state if an officer was under investigation.

Chair Puglisi aske EMC Coordinator Breece Flores if there had been a resolution conference for this grievance.

Ms. Flores stated there was no resolution conference for this grievance.

Member Keith stated on page 5 of 6, the step 3 response was the agency would like to have a meeting to resolve the issue and the grievant stated he agreed with a meeting, however, the Committee would not know if that meeting took place.

Member Beigel stated she was not certain the Committee had enough facts to say this followed the other hearings, she did not feel this grievance was similar enough to other prior decisions.

Member Russell and Member Thompson both agreed.

Member DuPree stated he agreed and felt the Committee should move the grievance to hearing.

Member DuPree motioned to move grievance #6757 to hearing.

Member Russell seconded the motion.

Chair Puglisi asked if there was any discussion, there was none.

MOTION: Motion to move grievance #6757 to hearing.

BY: Member DuPree

SECOND: Member Russell

VOTE: The vote was 4 to 2 in favor of the motion, with Chair Puglisi and Member Keith voting nay.

8. Discussion and possible action related to Grievance #6906 Michael Peterson, Department of Corrections – Action Item

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated he would like Member Beigel to lead the discussion on the grievance.

Chair Puglisi stated he recommended moving this grievance to hearing and wanted to hear the other side of the issue.

Chair Puglisi stated he noted the employee had referenced FMLA but generally, FMLA does not cover work restrictions as that is usually covered under the ADA of fitness for duty.

Chair Puglisi stated he was not clear if the employee suffered an injustice however, he was not clear on what the employer was doing regarding the letter of reprimand.

Member Beigel clarified that the proposed resolution was the employee wanted to stop being harassed by their supervisor.

Member Beigel stated this grievance was similar to the others the Committee had denied based on the EMC not being the correct venue or the resolution was not something the Committee could grant.

Member Beigel stated she was not saying an issue did not occur; however, she was not sure what the Committee could do.

Member Beigel stated she was concerned the EMC did not have the authority to stop the harassment.

Member Russell stated she was not focused on the proposed resolution and what she saw in the grievance was, due to a known medical condition, there is a restriction that the employee should not work more than 12 hours in a 24 hour period.

Member Russell stated she also saw an issue with whether the doctors information is in the appropriate place and she was questioning if the individual was being required to work more than the 12 hours in a 24 hour time period if the Committee has jurisdiction.

Chair Puglisi stated another point was if it was appropriate to hear the grievance at all, due to the alleged FMLA violation and the restrictions on confidentiality.

Chair Puglisi pointed out that if the grievance went to hearing, the employee's medical conditions would be in the open.

Member Thompson stated she did not think the Committee could discuss HIPPA, which looked like part of the grievance.

Mr. Whitney stated there were numerous allegations involving FMLA in this grievance and the jurisdiction for FMLA violations would be with the Department of Labor.

Member Beigel stated she still did not feel the EMC was the proper venue and had hoped the issue would have been resolved at the agency level at this point.

Member Keith stated she agreed with the issues around the FMLA information and the confidentiality concerns.

Member Keith stated it seemed the agency was requesting the actual paperwork and were still waiting on that and asked if the Committee could reach out and see if the issue had been resolved rather than go to hearing.

Member Keith stated if the paperwork states cannot work more than 12 hours in a 24-hour period then as long as the agency abides by that, but if not, the employee would have to go the ADA route which would be out of the EMC's jurisdiction.

Chair Puglisi stated even if there was documentation, is that reasonable accommodation and if not, that would be the ADA route which is certainly outside the EMC's jurisdiction.

Member DuPree moved to deny hearing for grievance #6906 based on NAC 284.658, lack of jurisdiction where relief may be provided by Federal law.

MOTION: Moved to deny hearing for grievance #6906 based on NAC 284.658, lack of jurisdiction where relief may be provided by Federal law.

BY: Member DuPree

SECOND: Member Russell

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

9. Discussion and possible action related to Grievance #6950 Thomas Danielson, Department of Business and Industry – Action Item

Chair Puglisi opened the Committee for discussion.

Member Beigel stated venue was an issue and the EMC had no jurisdiction.

Chair Puglisi stated he noted this could fall under NRS 284.020 subsection 2, where the department jhas the right to manage it's affairs as it sees fit as long as there is no violation of law, regulation or statute.

Member Beigel stated she had noted she felt this was retaliation for filing grievance #6584 and that may be more appropriate as a whistleblower complaint; it may be a better venue than the EMC for this type of issue.

Chair Puglisi stated the crux of the grievance was someone else was sent to a conference and the grievant felt they should have gone.

Chair Puglisi stated Member Beigel was correct regarding the piece on retaliation, that could be through the whistleblower policy.

Chair Puglisi stated that piece aside, the agency sent someone else to the training or conference but that was the agency decision and the agency is within their right to do so.

Member Keith stated she agreed and felt it is the agency's choice to make decisions regarding training and conferences.

Member Russell stated she noted the certification was previously paid for multiple staff by the agency and was no longer being taken care of, however, if that decision was made based on retaliation, the EMC has no jurisdiction.

Member Beigel moved to deny hearing for grievance #6950 as the EMC lacks jurisdiction on these matters.

Member DuPree seconded the motion.

Chair Puglisi asked if there was any discussion, there was none.

MOTION: Moved to deny hearing for grievance #6950 as the EMC lacks jurisdiction on these matters.

BY: Member Beigel

SECOND: Member DuPree

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

10. Public Comment

There was no public comment in the North or the South.

11. Adjournment

Chair Puglisi adjourned the meeting at approximately 10:16 am.