



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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Meeting Minutes of the Employee-Management Committee

Date: February 18, 2021

Pursuant to Governor Sisolak's Declaration of Emergency Directives 026 and 029, requirement contained in NRS 241.023(1)(b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate, is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). All meetings are held on MS Teams, and recorded.

Committee Members:

Management Representatives	Present
Ms. Pauline Beigel-Chair	X
Ms. Jennifer Bauer	X

Employee Representatives

Mr. Tracy DuPree	
Ms. Turessa Russell	
Ms. Sherri Thompson	X
Ms. Stephanie Parker-Co Vice Chair	X
Mr. Gwyn Davies-Co Vice Chair	

Staff Present:

Mr. Robert Whitney, EMC Counsel, Deputy Attorney General
Ms. Breece Flores, EMC Coordinator
Ms. Ivory Wright, EMC Hearing Clerk

1. Call to Order

Chair Beigel called the meeting to order at approximately 11:15am.

2. Public Comment

There were no comments from the audience or Committee Members.

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

Chair Beigel opened the meeting with Committee introductions.

Chair Beigel swears in all the witnesses attending the hearing.

4. Adoption of the Agenda – Action Item

Chair Beigel requested a motion to adopt the agenda.

MOTION: Moved to adopt the agenda

BY: Member Parker

SECOND: Member Russell

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

5. Adjustment of Grievance of Teresa McCastle Grievance #6277, Department of Corrections.....For possible action.

This matter came on for hearing before the Employee-Management Committee (“EMC”) on February 18, 2021 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance #6277, filed by Officer Teresa McCastle (“Grievant” or “Officer McCastle”). Officer McCastle was represented by Senior Correctional Officer Robert Ashcraft (“Mr. Ashcraft”) and represented herself at hearing. The agency-employer, the State of Nevada, Department of Corrections (“NDOC”), was represented by State of Nevada, Personnel Officer I Meghan Chrisman (“Ms. Chrisman”), Personnel Officer III Christina Leathers and NDOC Human Resources Technician Tracy Hill. Grievant, Officer Tonya Armendariz (“Officer Armendariz”), Officer Latricia Smith (“Officer Smith”) and

Ms. Chrisman were sworn in and testified at the hearing. There were no objections to the exhibits.

Mr. Ashcraft started the opening statement that the grievance was to address NDOC's violation of Administrative Regulation 301 as applied to Casa Grande Housing ("Casa Grande") by not performing a shift bid at that location. Mr. Ashcraft noted that Deputy Director Harold Wickham had stated in his Memo [dated December 11, 2018] that NDOC's goal was to make sure that staff was given the opportunity to bid in a manner that was fair and consistent in all NDOC facilities. Mr. Ashcraft noted that AR [Administrative Regulation] 301.01(2) stated shift bids shall be conducted at all facilities with more than 20 correctional officers on the legislatively approved staffing chart, and that there was an exception for new facilities, which CASA Grande was not, and that Casa Grande had over 20 legislatively approved positions.

Mr. Ashcraft stated that AR 301 had been approved by the Prison Board, the Governor and NDOC Director. They were asking Casa Grande to follow the Administrative Regulation 301 and for fairness, firmness, and consistency at all institutions throughout NDOC.

Ms. Chrisman stated that as far as NDOC's stance, they wanted to bring notice to the date of the incident that was being grieved, the scheduling of assignments effective January of 2019. She stated that the NDOC felt that AR 301, regarding the shift bid, was relevant and current, and that the scheduling process was followed according to agency procedure. Officer McCastle testified that as far as the 2019 rescheduling agreement, there was really no such thing. She stated that the parties were

in a resolution meeting to resolve matters, and there was supposed to have been a shift bid for the following year, 2020, and that action was not upheld, which was why her grievance was as late in time as it was. She stated that AR 301 was not followed or upheld according to the agreement that was made with NDOC and the Officers.

Officer Armendariz testified that she was hired by NDOC in March 2007. She stated that Casa Grande had not been able to shift bid in all her years of service at that location. She stated that she was at the resolution agreement referred to by Officer McCastle, and that both sides of the agreement signed off on it, and that because of the agreement several officers dismissed their grievances.

Officer Armendariz stated that this agreement was not upheld “at all.” She stated that Officer Nagelhout assigned the Casa Grande officers to their shifts in 2019, including officer work hours and days off, and that he admitted in front of other officers to doing so.

Officer Smith testified that she had been with NDOC since April 2012 and had been at Casa Grande since 2018. She stated that when she first came to Casa Grande NDOC was not performing shift bids there, although they had always been performed at her prior institution, Florence McClure.

Officer Smith stated in substance that Casa Grande had a “wish list” where officers could list five positions the officer would like to be assigned to. Officer Smith said in substance that the wish list was

popular with many, but not all the officers, and that most of the officers received the posts which the officer wanted through the wish list process.

Officer Smith noted that there was an officer who was disliked by the senior officer at Casa Grande who did not received the shift that the officer had wanted when using the wish list, and that the senior officer had quite a bit to do with the posts the officers were actually assigned to at Casa Grande.

Officer Smith testified that she had been put on the night shift, and she personally believed that the reason she was put on night shift was because she had spoken out on the rules and regulations that were not being followed by the office facility manager, and had expressed concern about other matters that were going on at Casa Grande. This included the 100% exempt posts, which Officer Smith stated that in the AR were only supposed to be at 12.5%. She was told when she was put on night shift that it would benefit NDOC if she was put on night shift.

Upon cross examination Officer Armendariz stated that initially Officer Nagelhout, when he was scheduling the other officers, was in the position of correctional officer, and was not a senior officer, but that even as a senior correctional officer he had no authority or right according to AR 301 to assign officers their days off and shifts.

Ms. Chrisman noted that Officer Nagelhout had been a senior correctional officer since 2015.

Officer Smith also stated that she was not aware it was management's decision as to whether or not to place an employee on a particular shift and assignment in view of the needs of the particular facility, and that she did not understand that process, as all of the correctional officers at Casa Grande had the same training, with the exception of culinary.

Officer Armendariz also testified in substance that the shift Officer Naglehout provided was used, and that when there officers were changing shifts at Casa Grande was when the discussion between Officer Naglehout and McCastle occurred where Officer McCastle questioned why with Officer Armendariz's seniority was she placed in Unit 1 where she did not want to be? According to Officer Armendariz, Officer Naglehout responded that he wanted a female in Unit 1 because there were women inmates in Unit 1. According to Officer Armendariz, Officer McCastle told Officer Naglehout he was not allowed to take that action.

Officer McCastle testified that with respect to the 2020 shift bid at Casa Grande, NDOC simply placed the officers where they wanted them, and that NDOC also exempted Casa Grande from shift bidding for 2021. Officer McCastle also testified that all other NDOC facilities had shift bids, and that Casa Grande used to have shift bids, and that Casa Grande did not have shift bids simply because NDOC did not want to have them in disregard of AR 301, and that she wanted AR 301 to be followed, and that Casa Grande had the right to shift bid.

In response to questioning from Member Bauer, Officer McCastle responded that 22 correctional officers were legislatively approved on

the staffing chart at Casa Grande, and that the number of positions assigned per the legislatively approved staffing chart was 22 (20 correctional officers and two senior correctional officers).

Ms. Chrisman argued that Casa Grande had the 22 officers as previously testified to, but that Casa Grande also had officers from Three Lakes Camp who fell under the assigned duty location of Casa Grande. NDOC's position was that the exemption for AR 301 was appropriate given this fact.

Ms. Chrisman also noted that there had been two completed cycles of scheduling since the initial incident in the instant grievance, and that Officer McCastle withdrew her grievance during this time period, and that NDOC was unsure of why Officer McCastle wanted to proceed with her grievance.

Ms. Chrisman stated that since the original grievance was filed NDOC had a new Director, a new Deputy Director of Programs, and a new Deputy Director of Operations. Ms. Chrisman stated that there was a comment from Officer McCastle testimony that in the past there may have been a shift bid at Casa Grande, and that from her understanding that was the result of a determination for a particular grievant that was upheld, and that NDOC was required to offer a shift bid for that particular year. Ms. Chrisman stated that this was a "one off" event.

Ms. Chrisman stated that it was management's right to determine how to administer shift and shift assignments at Casa Grande while adhering to NDOC AR's governing such actions. She stated that the regulation

governing shift bid was a temporary regulation, but that NDOC expected to finalize the review of AR 301 after collective bargaining was concluded.

Ms. Chrisman also stated that Casa Grande was one of NDOC's smaller facilities, which was why NDOC felt that the exemptions in AR 301 applied. It was noted that the traditional housing at Casa Grande does have two shifts available for officers to work. She said that NDOC was never closed, and that there were residents in their facilities 24/7, 365 days a year, and that by legislation NDOC had to maintain minimum staffing levels to maintain a safe, humane environment. This meant that NDOC had to maintain flexibility to move employees to cover different areas and the shifts needed to protect inmates from themselves, each other, and staff.

Ms. Chrisman stated in reviewing the essential functions of the positions mentioned, that the officers had signed these documents upon hire, and it was expected that correctional officers would be able to work any shift or post assignment in any facility.

Ms. Chrisman stated NDOC officers had the option to transfer to different facilities at any time, so that Officer McCastle could request a transfer to a facility that did offer shift bidding.

Ms. Chrisman stated that NDOC's shift bidding process was conducted in reliance on employee seniority, which was determined by an employee's service date. The submission of requested hours and schedule assignments were based on seniority, which was communicated

to NDOC staff members. She noted that shift bidding or scheduled assignments (the wish list) ensured that NDOC employees had the opportunity to submit for a shift that was best for them.

Ms. Chrisman stated in response to questioning concerning the fact that AR 301 was in draft form and had been since 2018, that NDOC had several AR's that were in temporary status, and that even though the AR's were temporary they were still in effect until a final AR could be reviewed and approved pursuant to the normal process.

Ms. Chrisman stated that with respect to the 22 officers at Casa Grande, there were employees who were part of the Three Lakes Camp who were temporarily assigned to Casa Grande, and that therefore NDOC was abiding by AR 301.

Mr. Ashcraft stated that AR 301 made no exemptions with respect to camps, and that the AR stated that shift bidding would be conducted at NDOC facilities with over 20 correctional officers on the legislatively approved staffing chart, and that Casa Grande had 22 officer assigned through the legislative approved staffing chart. In response to questioning, He stated that the AR stated the shift bid process did not apply to new institutions and facilities, but that Casa Grande was not considered a new institution or facility.

Ms. Hill testified that at Casa Grande NDOC had, except for the "one off" mentioned by Ms. Chrisman, never implemented shift bids. She stated in substance that Casa Grande was a unique facility, as inmates could leave the facility, and that there were job duties unique from other

NDOC institutions for the correctional officers. She also stated that as far as the 2018 incident that was a “one off,” a previous correctional manager created the wish list, and Ms. Hill thought that the wish list process at Casa Grande was still in effect.

Ms. Hill further stated that AR 301 she believed said that exempted positions were excluded from the shift bidding process, and that with the exemption she was unsure if that would decrease the actual numbers of officers available for shift bidding purposes. She further stated that she believed in the past that because of the exempt posts, and the resulting decrease in the amount of positions to be included in the shift bid, that this led to Casa Grande not participating in the shift bid process.

Ms. Hill also testified that the boot camp personnel were only temporary and in different budgets code, and so were not part of the legislatively approved positions for Casa Grande.

Officer McCastle testified that AR 301 stated that exemptions could be made up to 12.5%, and that because NDOC exempted a position that did not mean NDOC subtracted an officer, it meant NDOC subtracts a position, so that at all times there were still 22 officers able to shift bid, and that exempting positions did not change the officer count at Casa Grande or the amount of legislatively approved positions, and that NDOC always wanted to subtract the exempt positions from the legislatively approved officer count. She also stated that AR 301 said that because NDOC had exempted those positions the officers could not bid on the exempted position, and that it did not subtract the number of officers at Casa Grande.

Officer McCastle testified that as far as the boot camp, those officers were not at Casa Grande, and that they did not need the boot camp officers to qualify to bid, and that exempting all of Casa Grande was not in accordance with AR 301.

Officer McCastle stated that when she first came to Casa Grande in 2013 shift bidding was occurring there.

Officer Smith stated that she had spoken with Ms. Hill sometime before, and that Ms. Hill was unaware at that time that Casa Grande was 100% exempt from shift bidding.

Officer Smith said that right after speaking with Ms. Hill, while she was walking back to her unit, she met Deputy Director of Programs Williams and she jokingly said that it was because of him she was going on night shift.

Officer Smith stated that Deputy Director Williams asked her what she meant, and she told him that every post at Casa Grande had been exempted. According to Officer Smith Deputy Director Williams responded that he did exempt all the posts at Casa Grande, but that he was going to be meeting with Lieutenant Christiansen and would try to determine how Officer Smith was placed on night shift.

Officer Smith also stated that she had been told by the facility manager at Casa Grande that they were a camp. She testified that the wish list was followed for one year, but after that NDOC just put officers at Casa

Grande where they wanted to, and that some officers remained in the same posts for years, while the AR said that an officer had to move posts every two years.

Officer Smith further stated that the officers from the boot camp took over most of the day shift positions at Casa Grande.

Mr. Ashcraft argued that NDOC still kept trying to circumvent AR 301, even though it was clear in how it was written, and that it did not need interpretation. Mr. Ashcraft also argued that not only was the shift bid the correct procedure in AR 301, it was the right thing to do.

In response to questioning by Member Parker, Ms. Hill noted that Casa Grande has always had a unique role, and that shift bidding was part of that, although NDOC at Casa Grande believed that it was following AR 301, and that the interpretation had always been that Casa Grande was exempt from shift bidding. Ms. Hill added that this information was known in advance by officers who wanted to come to Casa Grande, and that she was unsure of specifically how shifts were assigned at Casa Grande.

Member Parker also asked about the “one off” shift bid mentioned in testimony earlier.

Ms. Leathers responded to Member Parker that Casa Grande had one shift bid in its history, which was held in 2018, and that it was held following a grievance.

Member Bauer asked NDOC how many correctional officers were currently on the legislatively approved staffing chart at Casa Grande?

Ms. Leathers responded to Member Bauer that there were 22 peace officers approved for Casa Grande, 20 correctional and two senior correctional officers. She also clarified Ms. Chrisman's statement that there had been previous grievances from Casa Grande officers regarding the increase in staffing numbers from 22 by adding the officers who transferred over from boot camp, and that it was NDOC Human Resources' understanding that the boot camp officers operate boot camp operations and that the Casa Grande officers handled the Casa Grande operations, although there might be some overlap.

Member Bauer additionally asked how many correction officers were currently on the legislatively approved staffing chart for an average camp?

Ms. Leathers responded that there were a total of 12 officers assigned to a camp.

Member Bauer asked what exemptions NDOC believed existed for the matter in question.

Ms. Leathers responded by directing the EMC to page two of AR 301 (Employee Exhibit 1), and noted that exempted positions could be considered for the mental health unit, segregation unit, behavioral, visiting, public contact positions or for any other positions identified by the warden and approved by the appropriate Deputy Director in critical

labor areas or during times of critical labor shortages, and that there was no limit to the number of posts that could be identified and exempted from the bidding process.

Ms. Leathers stated that there was testimony earlier that only 12.5% of correctional officer posts could be excluded from the bid process, but No. 5 in AR 301.01 indicated that there was no limit, so that there was a need to clarify the policy, but that the way NDOC read the policy it allowed for in this instance the Deputy Director of Operations to exempt the entire facility from shift bidding.

Member Thompson asked, with respect to there being no limit to the number of posts that could be identified or exempted from shift bidding, how long that could go before some action could be taken.

Ms. Leathers responded there was nothing in AR 301 that specified the length of time posts could be exempted, she would bring the matter to the executive team to consider placing a cap on the number of exemption years.

Officer McCastle testified that due to the fact that AR 301 had existed in draft from since 2018, and that since Casa Grande was legislatively approved for 20 or more officers, that her grievance should be upheld and shift bidding should take place at Casa Grande.

Officer McCastle also stated that as far as where the differences in facilities were stated, that there was no difference in writing between Casa Grande and other facilities because they all fell under NDOC.

Officer McCastle further stated that if she would have known prior to coming over to Casa Grande that it would have no shift bids she would not have transferred (although Officer McCastle later stated that Casa Grande was performing shift bidding when she first began work there), and that she would like NDOC to follow what AR 301 said, and that the prior grievance involving Casa Grande and shift bidding in reality involved 20 officers.

Ms. Leathers stated that NDOC currently did not hire into Casa Grande, and that officers who came into that facility did so via transfer, and that knowing there was only one shift bid on record for that facility an officer before transferring was required to meet with the correctional manager.

Ms. Leathers also again referenced the uniqueness of Casa Grande, and that it had offenders who could come and go as they pleased, 24/7, and that there were offenders who were limited in where they could go and what programs they could participate in, but it was still part of NDOC.

Ms. Leathers stated that she felt that NDOC had followed AR 301.01, as No. 5 in that AR 301 allowed for 100% exemptions as determined by the Deputy Director. She stated that she had drafted a list of questions based on what she had heard in Officer McCastle's grievance to discuss with the Deputy Director as well as the correctional manager and lieutenant, and that NDOC was committed to following up to ensure that there was better communication on the process in the future.

Chair Beigel asked for the committee to deliberate.

Member Bauer asked Officer McCastle about Section 5 of AR 301.01, and quoted: “all officers shall be made aware of each exempt position via the NDOC computer system at each institution” and asked Officer McCastle if she was aware of the exempt positions via the NDOC computer system at Casa Grande?

Officer McCastle responded to Member Bauer that she did not receive a letter stating what was exempt, and that the officers at Casa Grande knew verbally what positions were going to be exempted, and that the only exempt post that made sense to her was the culinary because of OSHA requirements, as all officers had the training and could perform the other exempted positions.

Officer McCastle stated that as far as sitting down with the manager, all she did was email and ask, and that everyone already knew who was going to be in the exempted posts, and she was never asked if she wanted to be in one of those posts. She added that if this was occurring prior to Lieutenant Christiansen and Lieutenant Spiece coming on the officers just kept those positions, and that only one officer had an exempt spot because he performed culinary and had been to class for that position.

Member Bauer asked Officer McCastle about Section 5 of AR 301 1.01, as it said all officers shall be made aware of each exempt position via the NDOC computer system at each institution, and asked Officer McCastle if she was aware of any exempt positions in the NDOC computer system at Casa Grande?

Officer McCastle responded “no.”

Member Bauer asked Officer McCastle if she was aware of any exempt positions in the NDOC computer system at her previous institutions?

Officer McCastle responded “yes.”

Member Bauer asked NDOC how each officer was made aware of the exempt positions at each NDOC institution?

Ms. Leathers responded that it was her understanding that this information was sent out via email to the officers at the institution, as well as posted in common areas frequented by officers at Casa Grande.

Member Thompson asked Ms. Leathers if an officer at one institution had access to the exempt positions at another institution?

Ms. Leathers responded that it was her understanding that officers would not have access to that information because it was institution specific, so that only officers assigned to that institution would receive that information.

Member Thompson asked the same question of Mr. Ashcraft. “If an officer at one institution had access to the exempt positions at another institution?”

Mr. Ashcraft stated that officers at one NDOC institution would not have access to the exempt posts of another institution.

Member Thompson asked Mr. Ashcraft , “If an officer were to transfer into Casa Grande, would they be made aware of the exempt positions at that time?”

Mr. Ashcraft responded he could not speak specifically speak to those procedures at Casa Grande.

Officer McCastle stated that the information was sent out via email with the officer assignments next to the officers’ names, and that there was not a standard procedure at Casa Grande to have an inbox.

Member Thompson asked if an officer were transferring to Casa Grande, whether prior to transferring, would the officer be made aware if the position was an exempt one?

Officer McCastle responded “no ma’am.”

Member Bauer stated that she thought that it was clear that there was ambiguity in and opportunity for clarification of AR 301, but that it was clear from testimony that there were 22 correctional officers assigned on the legislatively approved staffing chart at Casa Grande. That would satisfy the requirement for Section Two of AR 301.01. She stated what was unclear, in the requirement that all officers shall be made aware of each exempt position via the NDOC computer system at each institution.

Member Bauer stated that she did not hear clarity that this existed and was being followed. She understood that exempt positions would be considered for several reasons, but was also unclear as to whether the

statement in AR 301.01 that said positions which were identified and approved as being exempt were excluded from the shift bidding process, and that therefore the selection of those positions were not subject to the requirements set forth in the other sections of the administrative regulation, so it was unclear on how to enforce that provision.

Member Bauer also stated in substance that she did not see where AR 301.01 allowed for a complete institution or facility to be exempted from AR 301.01.

Chair Beigel stated that to her Section 5 stated that there was no limit to the number of posts that could be identified or approved as exempt, but that if one went to Section 7, where it said that NDOC could exclude up to 12.5%, there was ambiguity when the two sections were read together.

Chair Beigel added that when she first read the AR in question the question in her mind was if there were 22 positions, and if NDOC exempted 6, did that take them below 20 positions, where the shift bid was now inapplicable?

Member Bauer stated that she also considered what Chair Beigel had considered, and was also unclear whether the exempt positions factored into Section Two of AR 301, whether an institution has 20 correctional officers on the staffing chart, because to her 20 FTE's [full time employees] on a staffing chart is 20 FTE's, regardless of what is done with them or where they work.

Chair Beigel added there were the words “except as described below,” in Section Two of AR 301.01, so it was unclear what NDOC really meant, and that was where the ambiguity started in her mind.

Member Bauer stated that she was unclear whether the 12.5% reduced the number of officers on the chart, and that she did not see clarity in whether an entire institution could be exempt, although she saw there was no limit to the number of posts that could be exempted, but did that mean an entire institution be exempted, as stated in the current AR?

Member Parker added that she was thinking along the same lines, and that there was a lack of consistency in the AR, even within Section 5, and she believed that was why there had been previous issues, and that the matter had not been addressed by NDOC.

Member Parker noted that it appeared there had been several attempts to revise and provide clarification, but AR 301 had contradicting parts and there was not clarity as far as what was considered in the exempted number, as it was unclear whether the exemptions were included in the 20, or if they had to be looked at separately, but that it did not appear to her to be that way.

Member Parker added that she thought that there was no excuse for the lack of providing clarity.

Member Thompson stated that she had to agree with everyone else, as the information was conflicting, it was unclear, it was not concise, and that there needed to be changes made.

Member Thompson further stated that it needed to be made clear that when a person went to work at Casa Grande, they understood what they were getting into.

Member Thompson also stated that she was unsure of whether the entire facility could be exempted from shift bidding pursuant to AR 301.01.

Member Bauer stated that in looking at Section Two of AR 301.01, she thought that section was clear, that “shift bidding shall be conducted at all institutions and facilities having more than 20 CO’s on the staffing chart except as described below,” so that notwithstanding the except as described below, it was clear that Casa Grande had 22 CO’s on the legislatively approved staffing chart. She then stated moving to Section 5 of AR 301.01, it was clear to her that the statement that all officers shall be made aware of exempt positions via the NDOC computer system at each institution, was not occurring. What was unclear was whether the statement that there was no limit to the number of posts that might be identified and approved as exempt positions actually allowed for an exemption of a whole institution or facility, and it was unclear if the exemption of up to 12.5% of the CO posts reduced the number thereby making it an institution eligible or ineligible for shift bidding.

Member Parker stated that she was struggling with the blanket use of Section 5 of AR 301.01, and that she had not heard where officers had been made aware of the exempted positions, and it sounded like officers were advised of where they would be posted, and she had not heard where it was shared with the officers what positions would be made exempt.

Member Bauer stated that administrative hearings are held in accordance with NRS 233B, so there was not a requirement for a preponderance of the evidence necessarily, but that the burden of proof was still on the Grievant, so that in the absence of clarity concerning an AR, Member Bauer asked Chair Beigel what direction should be leaned toward in terms of a decision?

Chair Beigel noted that the EMC could not fix what had occurred in the past, and that the grievance before the EMC was from 2019. She noted that if the EMC were to deny the grievance, they could say that moving forward NDOC should clarify whether there will be shift bidding at Casa Grande, which was how she was leaning at that point in time.

Chair Beigel expanded her statement, and stated that there had not been enough evidence shown that NDOC violated AR 301, and that part of the problem that she was having was that AR 301 was so ambiguous, that it was unclear it had been violated.

Member Parker stated that the ambiguity appeared to have been going on for a long time, and that since the ambiguity had been identified she had an issue with allowing it to stand and continue. She stated that although NDOC may not have violated the AR, they knew it was unclear, and engaged in abuse by not fixing the issue, and that NDOC had been untimely in addressing the matter.

Member Thompson stated that she was unsure of what could be done at this time, and asked whether a recommendation could be made to have

the issue checked into to make sure that NDOC was acting with due diligence in resolving the issue?

Member Thompson noted that in the past the EMC had acted to advise the Governor of potential issues and asked if a similar action could be taken in this grievance.

Ms. Leathers stated that it had been her effort to update and revise NDOC's AR's. She also stated that AR 301 had been pending revision, and that NDOC had started revisions in early 2020, and then COVID happened.

Ms. Leathers noted that NDOC had been discussing AR 301 at the Executive Team level with the understanding that it needed to be updated, finalized and presented to the Board of Prison Commission in April 2021, as the shift bid process at NDOC started at the end of July 2021.

Member Bauer felt that Member Thompson might have provided a good way to resolve the present grievance, and pointed out that NRS 284.073, "Employee Management Committee Duties," said that the Employee Management Committee shall serve in an advisory capacity to the Governor, Personnel Commission and the Division, with respect to all matters of personnel administration and relations between management and employees. She stated that if the EMC were to make an advisory recommendation or provide advice to the Governor, they knew from previous grievances that the Governor was the chair of the Nevada Board of Prison Commissioners, so that a communication from the EMC could

serve two purposes, and it could serve to compel a resolution to the AR 301.

Chair Beigel stated that she agreed with providing a recommendation that AR 301 be revisited.

Member Parker stated she was looking at AR 100, and it concerned the drafting of temporary or revised administrative regulations, and noted that any draft AR that had been signed by the drafter would become a temporary AR with the force of policy until presented at the meeting of the Board of Prison Commissioners, she was wondering what the delay in the process was, as she thought that the relevant issues were known in 2019.

Ms. Leathers explained that temporary AR 301 was signed by the then NDOC Director in December 2018, and the hope was that the AR would be finalized in time for the shift bid for the 2020 calendar year. Unfortunately, the then NDOC Director left the agency, and while an acting Director was appointed that acting Director had limited authority, so when Director Daniels came on board in December 2019 Ms. Leathers presented him with AR's she believed needed to be addressed, and a part of the delay in revising AR 301 involved the contract negotiations with the collective bargaining agreement, as correctional officers were identified in Unit H of the bargaining unit, represented by AFCSME. Thus, to make further changes to AR 301, NDOC needed to involve the correctional officers' representatives, and as there was not agreement concerning collective bargaining in place NDOC was in a holding pattern with respect to AR 301.

Ms. Leathers stated that she had requested the NDOC Deputy Directors to finalize the AR's so that they could be presented at the April 2021 Board of Prison Commissioners meeting. She also noted that with respect to AR 100, that AR was just revised and approved at the January Board of Prison Commission meeting, and that changed the manner in which NDOC revised AR's, and that the changes allowed NDOC to get AR's before the Board of Prison Commissioners more quickly than before.

Officer McCastle stated that the new proposed AR 301 wanted to change the number of officers with respect to exemptions from 20 to 30, so Casa Grande would be exempted altogether.

Ms. Leather's stated she did not know if that change would stay in AR 301. She stated that there was a new Deputy Director of Operations at NDOC and did not know if he planned on keeping the proposed changes to AR 301 or not. The Board of Prison Commissioners could also modify an AR.

Member Bauer asked if the Grievant had shown by a preponderance of the evidence that NDOC violated AR 301, and that there was so much ambiguity in AR 301 that reduction in positions could factor in or not, and whether an entire institution or facility could be exempted, so that she did not know if there was a preponderance of the evidence that NDOC had violated AR 301.

Chair Beigel voiced similar thoughts, but noted that this circumstance did not mean something did not need to be fixed and made clear, and that it should be more clearly stated that if NDOC exempted the positions they either do or do not count towards the number required for shift bidding.

Member Bauer noted that the EMC had heard grievances from much larger NDOC institutions, so she wondered whether AR 301 as written would allow NDOC to exempt those entire institutions from shift bidding?

Member Thompson stated that she felt that the Grievant had not shown that NDOC had violated AR 301, but that NDOC had not clarified the position.

Member Bauer noted that prior grievances said that all findings were made based on the preponderance of the evidence, either in the conclusions of law or findings of fact.

Member Beigel stated that she was leaning towards NDOC not having abused its discretion when it made the decision not to hold the shift bid based on the ambiguity in AR 301.

Member Bauer moved to deny Grievance #6277, because the Grievant failed to prove by a preponderance of evidence that NDOC violated its own AR or any State law/regulation. In accordance with NRS 284.073(1)(a) and (b), the EMC advised that NDOC revise AR 301.01 no later than the next regularly scheduled meeting of the Board of Prison

Commissioners to remove ambiguity in regards to the ability to exempt an institution or facility from the shift bid and whether exempted positions reduced the number of correctional officers requirement in AR 301.01 Section Two.

Member Parker seconded the motion and carried unanimously.

Based upon the testimony of the witnesses, the arguments made by the parties, the briefs, evidence, and documents on file in this matter, the EMC makes the following findings of fact. All findings made are based upon a preponderance of the evidence.

1. Grievant was a non-exempt State of Nevada employee.
2. Grievant was employed by NDOC as a correctional officer on January 23, 2019.
3. Grievant worked at the Casa Grande NDOC facility in Las Vegas, NV.
4. NDOC has an AR, AR 301.01, that deals with shift bidding for NDOC staff.
5. With the exception of the 2018 shift bid, NDOC has not held shift bidding at Casa Grande.
6. The shift bidding at Casa Grande for 2018 was the result of a grievance.
7. Instead of shift bidding, NDOC at Casa Grande employed a “wish list,” whereby officers could list up to 5 shifts the officers would like to be assigned to.
8. The positions on the wish list were not guaranteed.

9. AR 301.01(2) stated that shift bidding would be allowed at NDOC institutions having 20 or more correctional officers on the legislatively approved staffing charts, except as described below.
10. AR 301.01(5) stated in part that there was no limit to the number of posts that could be identified or approved as exempt positions by the warden of a particular NDOC facility.
11. AR 301.01(7) stated that a warden could exempt up to 12.5% of correctional officer posts from the shift bid process.
12. Casa Grande had 22 correctional officers according to the legislatively approved staffing chart.
13. NDOC believed that Casa Grande was exempt from AR 301.01, as pursuant to AR 301.01(5) the entire facility could be exempted.
14. The Officers from Three Lakes Camp did not change the fact that Casa Grande had 22 correctional officers according to the legislatively approved staffing chart.
15. It was unclear to the EMC whether the requirement that all officers be made aware of each exempt position via the NDOC computer system at each institution was being followed at Casa Grande.
16. It was unclear to the EMC in reviewing AR 301.01 that NDOC, aside from facilities having less than 20 correctional officers according to the legislatively approved staffing chart, could, pursuant to AR 301.01(5), exclude an entire facility from shift bidding.
17. It was unclear to the EMC in reviewing AR 301.01, whether exempting posts from the shift bidding process removed those officers from counting towards the 20 officers required in AR 301.01(2) for shift bidding at NDOC institutions.

MOTION: Moved to deny grievance #6277 based on the testimony and evidence, the grievant was unable to carry her burden of proving by a preponderance of the evidence that

NDOC violated AR 301.01. Additionally in accordance with NRS 284.073 (1) (a) and (b), the EMC advises that NDOC revise AR 301.01 no later than the next regularly scheduled meeting of the Board of Prison Commissioners to remove ambiguity in regards to the ability to exempt an institution or facility from the shift bid and whether exempted positions reduced the number of correctional officers requirement in AR 301.01 section two.

BY: Member Bauer

SECOND: Member Parker

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

6. Discussion and possible action related to Grievance #7422 Jaouad Bouakka, Department of Corrections Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing, if the matter is based upon an EMC's previous decision or does not fall within the EMC's jurisdiction.

Chair Beigel opened for committee discussion.

Chair Beigel stated the substance of the grievance was he had applied for a position and wanted to know why he was not chosen. She stated the EMC had previously answered that was like this one.

Member Parker stated she had noted that this grievance seemed like something the EMC had heard prior.

Member Russell stated that they have been able to answer these types of grievances prior without a hearing. She stated she had reviewed that the grievant feels they were discriminated against. Which would not be in our jurisdiction. She also stated it was not the EMC's jurisdiction to seek the answer why the Agency had chosen someone else.

Chair Beigel reviewed the EMC decision database and found a grievance that was similar to Mr. Bouakka' s. grievance. Decision 22-17 Sorich, The EMC lacked jurisdiction to review decisions by the warden to select personnel for exempted positions.

Member Bauer stated decision 22-17 for Sorich was similar and feels comfortable to make a motion to answer this grievance without a hearing based on a previous decision by the EMC.

Chair Beigel asked if anyone else agreed or had a different direction they were thinking to decide?

Member Parker agreed in substance and it was similar to decision 22-17 Sorich, and she didn't feel the evidence presented was proven that the Agency violated AR 301. That was not the EMC decision to make as she

felt they didn't have jurisdiction to move this grievance forward.

Member Thompson stated she also agreed with Member Parker.

Chair Beigel stated she had moved this grievance to be heard as #6 and #7 together, but then as they discussed grievance #7422 that they should be separated.

Member Thompson stated she agreed with the amendment by Member Bauer.

Member Bauer confirms that we have referred grievances to DHRM to seek advice of where to file a complaint?

Chair Beigel stated she had recalled so, and confirmed with EMC DAG Robert Whitney for advice?

Dag Whitney stated yes, that was appropriate as the EMC has suggested this before with grievances.

Member Bauer stated yes, we have referred grievants of other venues they may find more helpful.

Chair Beigel stated now we have a friendly amendment was Member Parker was ok with the amendment? Both Member Parker, and Member Bauer agreed and seconded the motion.

MOTION: Moved to answer grievance #7422 without a hearing due to the lack of information provided that there was a violation with policy AR 301, there are claims that included in the grievance that are not within the jurisdiction of the EMC pursuant to NAC 284.695(1) referring the grievant to DHRM to review appropriate venues related to any claims of discrimination.

BY: Member Parker

SECOND: Member Bauer

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

7. **Discussion and possible action related to Grievance #7467 Sarah Rushton, Department of Corrections Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing, if the matter is based upon an EMC's previous decision or does not fall within the EMC's jurisdiction.**

Chair Beigel opened for discussion.

Member Parker stated she didn't believe this is something that the EMC

has jurisdiction on. Harassment of a supervisor would be a different venue. This would not be the jurisdiction of the EMC to decide an outcome.

Member Thompson stated she agreed it was not the EMC's jurisdiction to decide this grievance.

Member Bauer stated she had a motion ready to submit.

MOTION: Move to deny grievance #7467 as the EMC can answer the grievance without a hearing if the case is based upon a previous decision or does not fall within its jurisdiction per NAC 284.695 (1).

BY: Member Bauer

SECOND: Member Parker

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

8. **Discussion and possible action related to Grievance #7563 Michael Ralston, Department of Corrections Possible action may include reviewing the request for consideration to determine if the grievance can be answered without a hearing, if the matter is based upon an EMC's previous decision or does not fall within the EMC's jurisdiction.**

Chair Beigel opened for discussion, this grievance seemed very similar to the previous grievance we just discussed without the mention of discrimination or harassment.

Member Bauer agreed there were not allegations of discrimination.

Member Bauer stated she was ready to make a motion.

Chair Beigel asked if any more discussion was needed?

Member Thompson agreed she agreed with Member Bauer's motion.

MOTION: Move to answer grievance #7563 without a hearing, in accordance with NAC 284.695 (1), based on the EMC Committee's previous decisions.

BY: Member Bauer

SECOND: Member Thompson

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

Chair Beigel asks if there are any public comments? None heard.

Chair Beigel concludes the meeting at approximately 1:04 p.m.