



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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**Meeting Minutes of the Employee-Management Committee
December 13, 2018**

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

Committee Members:

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

Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	
Ms. Dana Novotny	X

Staff Present:

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

1. Call to Order

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

2. Public Comment

There were no comments from the audience or Committee Members.

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

Chair Puglisi opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

Chair Puglisi requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.

BY: Member

SECOND: Member

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

Chair Puglisi stated the Committee would be taking the agenda items out of order due to the representatives from the Department of Transportation having other scheduled commitments.

The meeting began with agenda item #9, Motion to Dismiss Grievance #4638 of Marc Dawe, Department of Transportation.

5. Discussion and possible action related to Motion to Dismiss Grievance #4638 of Marc Dawe, Department of Transportation – Action Item

The above-referenced motion to dismiss was heard by the Committee¹ on December 13, 2018. Deputy Attorney General Dominika Batten (“Deputy Attorney General Batten”) represented NDOT, while Mr. Dawe was represented by Jeanine Lake.

Deputy Attorney General Batten argued in substance that Mr. Dawe did not set forth a statute, regulation or policy that NDOT had violated.

Additionally, Deputy Attorney General Batten argued that Mr. Dawe’s grievance was substantially similar to previous grievances the Committee had already decided, and the Committee had either dismissed those grievances without a hearing or has denied the grievances because the statute at issue, NAC 284.204, was discretionary.

Deputy Attorney General Batten stated in substance that Mr. Dawe had filed a grievance concerning an increase in pay steps and alleged that NDOT had adjusted other employee’s steps and not Mr. Dawe’s. In particular, Deputy

¹ The Committee members present at the hearing representing a quorum were as follows: Chair Guy Puglisi (DHHS), who chaired the meeting; Jennifer Bauer (SPCSA), Sherri Thomson (DETR), Turessa Russell (UNLV), Tonya Laney (DMV) and Dana Novotny (GOED). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, EMC Coordinator, Nora Johnson and EMC Hearing Clerk, Ivory Tolentino were also present.

Attorney Batten stated that Mr. Dawe had alleged NDOT was restoring steps to employees which the Governor had frozen for several years beginning in 2010.

Deputy Attorney General Batten argued that NDOT had told Mr. Dawe that was not the case, and that it had no authority to undo the Governor's order that was in place from 2010 until 2017.

According to Deputy Attorney General Batten, NDOC further explained in substance that it did adjust steps pursuant to NAC 284.204, but that this involved many requirements, and that when an incoming employee came in, NDOT had the authority under NAC 284.204 to correct an inequity in pay if the incoming employee was in the same grade, same class and same geographic location as a current employee.

Furthermore, Deputy Attorney General Batten noted in substance that NAC 284.204 was discretionary.

If NDOT pursued a pay increase pursuant to NAC 284.204, Deputy Attorney General Batten stated, then DHRM (Division of Human Resource Management) would need to approve NDOT'S action based on NAC 284.204.

Deputy Attorney General Batten further stated that following the explanation given to Mr. Dawe, Mr. Dawe essentially added in his argument that the circumstances were not fair.

Deputy Attorney General Batten argued that whether one looked at the initial grievance or looked at the arguments in Mr. Dawe's Opposition (to NDOT's Motion to Dismiss), the Committee did not have jurisdiction to hear Mr. Dawe's grievance, and the motion should be granted.

Deputy Attorney General Batten noted in substance that Chapter 284 gave the Committee the authority to review a grievance, and it permitted the Committee to answer grievances without a hearing if the Committee decided it did not have jurisdiction to hear a grievance.

Deputy Attorney General Batten stated in substance that the Committee has restricted its review of grievances to where agencies had failed to follow statute, regulation or policy, and that this fact was reflected in the attachments to the Motion to Dismiss.

Deputy Attorney General Batten cited to the Grievance of Jennifer Nash (Decision No. 57-11) and argued in substance that this grievance had said that the Committee looked to whether an appointing authority complied with relevant statute, regulations and policy, and that the Committee would generally not put itself in the place of an appointing authority, which has a great deal of latitude in the management of its employees.

Deputy Attorney General Batten noted in substance that this statement was consistent with Chapter 284, which said that its provisions were not to limit the ability of an appointing authority to conduct its own affairs.

Deputy Attorney General Batten argued in substance that NAC 284.204 had been implemented by the Personnel Commission for the purpose of promulgating the pay plan of classified employees.

Deputy Attorney General Batten also argued in substance that NRS 284.175 gave the DHRM Administrator the ability to prepare a pay plan for all classified employees, and it provided the Administrator the ability to make recommendations to the Legislature during session concerning the salaries of paid employees.

According to Deputy Attorney General Batten NAC 284.175 also gave the Personnel Commission the authority to adopt regulation to carry out the pay plan, and the Personnel Commission had done this through NAC 284.204.

Deputy Attorney General Batten stated in substance that it appeared Mr. Dawe was arguing that the geographic location part of NAC 284.204 was unfair, but that the NAC “is what it is,” and that NDOT was obligated to follow it.

Therefore, Deputy Attorney General Batten stated in substance, the Committee did not have jurisdiction to hear this grievance because NDOT was simply following regulation, and NDOT did not have the power to change the relevant statutes and regulation; there was simply nothing in Mr. Dawe’s grievance for the Committee to review because NDOT had not violated any statutes, and so Mr. Dawe’s grievance should be dismissed.

Mr. Dawe argued, through Jeanine Lake, that there was an injustice created, and a pay inequity, as a result of what occurred at the time Mr. Dawe filed his grievance.

Mr. Dawe argued that his grievance met the definition under NAC 284.695 of a grievance, and that when he filed his grievance, no one had told him what the explanation was for the step adjustments in the other areas of the State and why the adjustments were not being made in some of the rural areas of the State, such as where Mr. Dawe worked in Tonopah.

Mr. Dawe also stated in substance stated that the Committee had already had the opportunity to refuse to hear his grievance and it chose not to do so.

Mr. Dawe also argued that the State said NAC 284.204 authorized it to hire new employees from outside of NDOT, and then accelerate the steps of NDOT employees within that designated area, which Mr. Dawe agreed was true, but Mr. Dawe also argued in substance that at the same time this created a problem for other rural areas where the same employees were doing the exact same jobs and were not receiving the step increases.

Mr. Dawe further stated at the time his grievance was filed that was all he was asking for, which was to have the same consideration given to NDOT employees in the Tonopah area.

Mr. Dawe also noted in substance that NDOT had trouble maintaining full crews at some of its shops due mainly to the level of pay, so if the purpose for adjusting steps for one group to retain pay equity was the case, why was this not considered for other groups and areas?

Mr. Dawe further argued that he believed that the Committee had the jurisdiction to hear his grievance.

The Committee, after having read and considered all of the documents filed in this matter, and after having heard oral arguments, deliberated on the issues presented.

Chair Puglisi asked for clarification from Nora Johnson, Committee Coordinator (“Coordinator Johnson”), on whether or not the Committee had indeed had the chance to refuse to hear Mr. Dawe’s grievance.

Coordinator Johnson responded that Mr. Dawe’s grievance had been filed prior to her assuming the position of Coordinator, but she did not believe that Mr. Dawe’s grievance ever went to a hearing.

Chair Puglisi also stated in substance that in May 2016 the Committee had sent a recommendation to the Governor’s Office because the Committee had been hearing or receiving so many grievances about the step inequity caused by agencies hiring new employees at adjusted pay steps, and that this letter was a result of a motion to dismiss hearing the Committee had heard in March 2016 on behalf of the Department of Public Safety.

Chair Puglisi noted in substance that the Committee had dismissed that grievance because it did not have jurisdiction, and one of the cases mentioned in that decision (Decision 03-16) was the Jennifer Nash Decision.

Member Bauer stated in substance that her initial thoughts on Mr. Dawe’s grievance were that the Committee had heard grievances similar to Mr. Dawe’s grievance, and that the circumstances were not new, and that while she sympathized with Mr. Dawe she felt the Committee could dismiss Mr. Dawe’s grievance based on past decisions.

Member Laney stated in substance that in its past decisions the Committee had concluded that while NAC 284.204 provided for an adjustment of steps to maintain an equitable relationship in the status of steps of employees if a disparity existed, that the exercise of the authority granted by NAC 284.204 was discretionary on the agency’s behalf, and that in such cases the Committee concluded that it lacked the authority to order the relief requested.

Member Laney also stated that two of the noted grievance decisions she reviewed, Decision No. 74-1 and Decision No. 94-09, were similar to Mr. Dawe’s grievance, and that the Committee’s decision for those grievances was to either dismiss the grievance or not hear it based on previous decisions of the same nature.

Member Thompson stated in substance that she thought that Mr. Dawe's grievance had merit, and that there were many unanswered questions about it, and that the Committee should hear Mr. Dawe's grievance.

Member Thompson further stated in substance that she believed that the Committee had jurisdiction to hear Mr. Dawe's grievance, and that the Committee did not know all of the parameters or necessary information concerning Mr. Dawe's grievance.

Member Russell stated in substance that she thought that the Committee had moved off track a little bit, since the motion to dismiss was based on lack of jurisdiction, and that the Committee's arguments should be limited to that.

Member Russell further stated in substance that the Committee should be looking at whether the Committee had jurisdiction or not.

Member Russell also stated in substance Mr. Dawe's grievance should be moved to hearing.

Chair Puglisi noted in substance that the requested relief included back pay, and that Mr. Dawe was at the top of his scale, so if the Committee felt it indeed had jurisdiction, and that it had the authority to grant Mr. Dawe's requested relief, then it should deny the motion to dismiss, which would result in Mr. Dawe's grievance proceeding to hearing.

Member Novotny stated in substance that if the Committee had voted in the past to dismiss grievances similar to Mr. Dawe's grievance, then it needed to dismiss Mr. Dawe's grievance because the Committee could not give Mr. Dawe something it had not given other grievants.

Chair Puglisi stated in substance that for consistency purposes he thought that the Committee should grant the motion to dismiss, and that if the Committee granted a hearing for Mr. Dawe's grievance it would create an inequitable situation for similar grievances in the past which had been dismissed, and that the Committee had the authority in this situation to dismiss Mr. Dawe's grievance based on prior decisions, in particular the Jennifer Nash Grievance (No. 57-11) and the Sivia Grievance Decision (No. 03-16).

Member Bauer made a motion to grant the motion to dismiss based on previous decisions made by the Committee, which was amended to state the actual previous Committee decisions, Decisions No. 57-11, and 3-16.

The Committee voted² to grant NDOT's motion to dismiss.

MOTION: Moved to grant NDOT's motion to dismiss based on previous decisions, #57-11 and #3-16.
BY: Member Bauer
SECOND: Member Laney

² Member Bauer's motion was seconded by Member Laney and carried by a 4-2 margin; Members Thompson and Russell voted against the motion to dismiss Mr. Dawe's grievance.

VOTE: The vote was 4 to 2 in favor of the motion, with Member Thompson and Member Russell voting ‘nay’.

6. Discussion and possible action related to Grievance #5751 of Sonnette Caldwell-Barr, Department of Corrections – Action Item

This matter came for hearing before the Employee-Management Committee³ (EMC) on December 13, 2018 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance No. 5751, filed by Sonnette Caldwell-Barr (“Grievant” or “Dr. Caldwell-Barr”). Dr. Caldwell-Barr was represented by counsel, Casey A. Gillham, Esq. Christina Leathers, Human Resources Manager, represented the agency/employer, the State of Nevada Department of Corrections (“NDOC”).

Dr. Caldwell-Barr had a second grievance, Grievance No. 5752, which was heard simultaneously with Grievance No. 5751.

There were no objections to the exhibit packets submitted by the parties. Verne Lewis (“Dr. Lewis”), NDOC Psychologist III, Bradley Kyle (“Dr. Kyle”), NDOC Psychologist III, Karina Garma-Hoff, (Dr. Garma-Hoff”) NDOC Psychologist II, William Sandie (“Mr. Sandie”), former Associate Warden for NDOC, and Grievant were sworn in and testified on behalf of Dr. Caldwell-Barr. Christina Leathers (“Ms. Leathers”) and NDOC Inspector General Pamela Del Porto (IG DelPorto”), were sworn in and testified on behalf of NDOC. Additionally, State of Nevada, Department of Human Resources Management (“DHRM”) Michelle Garton (“Ms. Garton”) Supervisory Personnel Analyst, was also present in order to provide testimony in the matter.

STATEMENT OF THE CASE

Dr. Caldwell-Barr is employed with NDOC as a Psychologist II at the Lovelock Correctional Center in Lovelock, NV (“Lovelock”). Previously, Dr. Caldwell-Barr was employed at the Northern Nevada Correctional Center (“NNCC”) until transferring to Lovelock in June 2017. Dr. Caldwell-Barr argued in substance that NDOC had violated NRS 284.420 and NAC 284.734. It was argued in substance that NDOC violated NRS 284.420 by defeating, deceiving or obstructing Dr. Caldwell-Barr’s right to “examination, eligibility, certification or appointment” and by providing “special or secret information for the purpose of affecting the rights or prospects” of Dr. Caldwell-Barr “with respect to her employment in the classified service.”

Dr. Caldwell-Barr argued in substance that NDOC violated NAC 284.734 because it maintained secret files on Dr. Caldwell-Barr in NDOC’S NOTIS (Nevada Offender Tracking Information System), referred to as a database by Dr. Caldwell-Barr. It was further argued that NDOC would use NOTIS to track and maintain files on its employees.

Dr. Caldwell-Barr stated in substance that if an NDOC employee were accused of misconduct a file/report was created in NOTIS, and once entered

in NOTIS a report was given an Incident Report Number and assigned an incident level.

According to Dr. Caldwell-Barr, once an incident report was assigned an incident level it could then only be viewed by certain levels of NDOC staff.

Dr. Caldwell-Barr argued in substance that the problem arose when someone with a higher level of access created files on a staff member who did not have that same level of access. Then the staff member against whom the file was created could not see the file, could not respond to the file or might not even learn of the file's existence.

Between March 3, 2017 and March 23, 2017, Dr. Caldwell-Barr argued, there were at least three negative NOTIS files created on her.

Dr. Caldwell-Barr stated in substance that she was unaware for over a year of the existence of these three files; however, every NDOC employee with supervisor access would have had access to those negative files in NOTIS. It was also stated by Dr. Caldwell-Barr that supervisors, prior to making hiring decisions, often reviewed NOTIS.

NDOC argued in substance that there was no proof or evidence of secret files being kept by NDOC in NOTIS about Dr. Caldwell-Barr, or of any negative or corrective action against Dr. Caldwell-Barr in NOTIS. It was also argued by NDOC in substance that the alleged secret files were by no means reported to impact Grievant's opportunities and chances at promotion with NDOC.

Mr. Sandie testified in substance that he had retired in May 2018 as Associate Warden at Lovelock, where he had been an Associate Warden for approximately 6 years prior to his retirement.

Mr. Sandie further testified in substance that he helped test NOTIS when it was installed, and that its original purpose was to track inmates and inmate issues.

Mr. Sandie stated in substance that by the end of his career with NDOC NOTIS had become "all encompassing" and functioned as a sort of "catch-all."

Mr. Sandie stated in substance that at some point in time NDOC began requiring supervisors to report events/incidents in NOTIS, including events such as employees being late for work, and that supervisors could see this on NOTIS, but that the employee did not know the entry was there.

Mr. Sandie testified in substance that NDOC supervisors throughout the State could see these reports, but that the employee could not see the reports, and that the employees were not made aware of the entries, and that "they" were told not to make employees aware of the entries in NOTIS.

Mr. Sandie also stated in substance that at his access level he could view reports in NOTIS that had been filed on psychologists at NNCC.

Mr. Sandie testified that he was familiar with Dr. Caldwell-Barr, and that prior to Dr. Caldwell-Barr coming to work at Lovelock he had a conversation with the warden at Lovelock about Grievant.

Mr. Sandie stated in substance that the warden was concerned about Dr. Caldwell-Barr coming to Lovelock due to the grievance she had filed, but that NDOC needed a psychologist at Lovelock.

Mr. Sandie added that Carson City (NNCC) tended to attack its employees, and that he wanted to give Dr. Caldwell-Barr a chance to perform at Lovelock to see how she performed.

Mr. Sandie further testified in substance that the warden indicated to him that she had seen things in NOTIS about Dr. Caldwell-Barr, and that Grievant could be a problem.

Mr. Sandie added in substance that it had been great working with Dr. Caldwell-Barr.

Mr. Sandie stated in substance that he was involved in some hiring decisions, and that he looked at NOTIS prior to making offers to employees, especially for employees who wanted to transfer to Lovelock.

Mr. Sandie testified in substance that an employee might have the opportunity to respond to a report in NOTIS if there was an investigation associated with the report; otherwise, an employee might not know that the report in NOTIS existed.

Mr. Sandie also stated in substance that he was involved in the hiring of Dr. Nathan Woods ("Dr. Woods"), and that after the hiring of Dr. Woods he had no involvement in the hiring of mental health professionals at Lovelock.

Mr. Sandie also clarified that he could not speak to what the Lovelock Warden, Renee Baker, saw, but he assumed that she looked at the reports in NOTIS because that is what they all did, and that she brought up information in conversation that she could have only known by reviewing NOTIS.

Mr. Sandie also testified in substance that after his conversation with Warden Baker he looked in NOTIS for reports on Dr. Caldwell-Barr, and that he thought a couple of the reports may have been investigated by the NDOC Inspector General's Office.

Mr. Sandie said in substance that to him NOTIS was a database used as a file system by NDOC to track staff, and that he had been asked to go into NOTIS to review reports by Warden Baker, and that it was common practice to review reports on NOTIS anytime Lovelock had an employee transfer to that facility.

Mr. Sandie also testified in substance that one might not always be able to see the resolution to a report in NOTIS, as there might not be a resolution as to whether the allegation was substantiated or unsubstantiated, and that

seeing a resolution if one was stated depended on an employee's level of access.

Dr. Lewis testified that he was a Psychologist III who worked at Lovelock, and that he was familiar with Dr. Caldwell-Barr.

Dr. Lewis testified in substance that he remembered a conversation that he had with Warden Baker at Lovelock about Dr. Caldwell-Barr prior to Dr. Caldwell-Barr coming to Lovelock.

Dr. Lewis said that the conversation concerned Dr. Lewis requesting that Dr. Caldwell-Barr be allowed to transfer to Lovelock, and that Warden Baker stated that she did not want any problems. At the time Warden Baker said this to Dr. Lewis he stated in substance that he had no idea why Warden Baker said this and had assumed that it was because of a conversation with Dr. Woods, but now he realized that Warden Baker's statement did not require a conversation with Dr. Woods.

Dr. Lewis also testified in substance that Dr. Woods was a Psychologist II who he had hired in February 2014.

Dr. Lewis stated in substance that after some months Dr. Woods then promoted to the Psychologist III position at NNCC, and then later to an interim Psychologist IV position. Dr. Woods was Dr. Caldwell-Barr's supervisor in both his Psychologist III and IV positions.

Dr. Lewis testified in substance that he recalled conversations that he had with Dr. Woods about Dr. Caldwell-Barr, and that Dr. Woods spoke to him negatively about Dr. Caldwell-Barr, saying that she was difficult, and maybe even impossible to supervise, and that she was a "difficult" personality.

Dr. Lewis also testified in substance that Dr. Woods stated that Dr. Caldwell-Barr would never promote to Psychologist III so long as it were up to him.

Dr. Lewis also indicated that everyone knew there was "tension" between Dr. Caldwell-Barr and Dr. Woods.

Dr. Lewis also stated that he currently supervised Dr. Caldwell-Barr, and that she was professional, well-equipped, skilled, and that she was not difficult to supervise and worthy of promotion.

Dr. Lewis also testified in substance that he had no evidence of Dr. Caldwell-Barr not being considered for positions based on reports about her in NOTIS.

Dr. Kyle testified in substance that he currently worked at NNCC and had worked there "going on two years."

Dr. Kyle stated that he had held the position of Psychologist II at Lovelock, and that he was familiar with Dr. Caldwell-Barr, and that he had worked with her at NNCC.

Dr. Kyle, a Psychologist II, stated in substance that Dr. Woods had asked him to investigate Dr. Caldwell-Barr by having him contact various inmates and determine what took place between the inmates and Dr. Caldwell-Barr, since Dr. Woods had a number of kites⁴ that allegedly came from these inmates about Grievant.

According to Dr. Kyle the investigation took place in about March 2017.

Dr. Kyle stated in substance that there was no basis to the allegations that Dr. Caldwell-Barr was incompetent or mistreating inmates.

Dr. Kyle testified in substance that when he presented these findings to Dr. Woods his reaction was negative, and that Dr. Woods basically dismissed him from his office.

Dr. Kyle also testified in substance that he did not believe that Dr. Woods treated Dr. Caldwell-Barr fairly, and that on occasion Dr. Woods gave his opinion of Dr. Caldwell-Barr, and that his opinion was consistently negative.

Dr. Kyle also testified in substance that he had no evidence that NOTIS entries were used against Dr. Caldwell-Barr in order to not give her opportunities to promote.

Dr. Garma-Hoff testified in substance that she was a mental health clinician who worked at NNCC.

Dr. Garma-Hoff stated in substance that she had the duties of a Psychologist II, and that Dr. Caldwell-Barr had been her supervisor for almost a year when she was first hired.

Dr. Garma-Hoff testified that around March 2017, she recalled an inmate being placed on suicide watch, and was present when a psychologist interviewed the inmate.

Dr. Garma-Hoff testified in substance that the inmate was visibly upset and questioned why he was on suicide watch.

Dr. Garma-Hoff stated in substance that the inmate said that the day prior he was in his unit and an officer came to his bunk and told him that Dr. Kyle wanted to see him in Unit A. The inmate went to Unit A, and there met with Dr. Woods.

According to Dr. Garma-Hoff, the inmate stated that Dr. Woods asked him questions about Dr. Caldwell-Barr, and that the inmate had stood up for "Dr. C-B," and that as a result, he had ended up in suicide watch.

⁴ "KITES" is a form used by inmates to file a complaint and is used before the inmate grievance process.

Dr. Garma-Hoff stated in substance that after this incident the inmate asked to go back to the unit where Dr. Caldwell-Barr worked, and that she did not hear or see anything while listening to the inmate to make her believe that he was suicidal.

Dr. Garma-Hoff said that she did not know if it was common practice to be asked by the warden or other mental health staff to investigate a grievance or kite issued by an inmate.

Dr. Garma-Hoff also testified that she did not know if this incident had any impact on Dr. Caldwell-Barr getting a promotion.

The Grievant testified in substance that she was a Psychologist II at Lovelock and had worked there for about one year and six months, and before that had worked for two years and four months at NNCC.

Dr. Caldwell-Barr stated in substance that she had complaints in February 2017 about NDOC's mental health department, and that initially she emailed NDOC Deputy Director Tristan and Interim Mental Health Director Dr. Roy Hookum about her concerns.

According to Grievant, when Deputy Director Tristan emailed his response that he would meet with her to address her concerns he cc'd everyone she had lodged a complaint against, which included Dr. Woods.

Grievant testified in substance that her concerns were not resolved as a result of her email, and so she filed a formal grievance (in February 2017), which the EMC determined was outside of its jurisdiction.

Grievant stated in substance that as a result of filing her grievance, her working conditions became "impossible."

Grievant stated that she had inmates coming to her and telling her that Dr. Woods was investigating her, and that the inmates said Dr. Woods was "vengeful."

Dr. Caldwell-Barr said she did not know where or when Dr. Woods would go after her next, and that an Inspector General investigation followed her from NNCC to Lovelock for doing a Static 99 for an inmate for the Parole Board and for using information from a PSI (pre-sentence investigation) in a sex offender treatment group.

Dr. Caldwell-Barr testified in substance that per NRS she was required to draft the Static 99 Form or it would have been considered insubordination, and that bringing out information from PSIs in group treatment was a legitimate treatment tool in some instances.

Dr. Caldwell-Barr stated in substance that prior to filing her grievance Dr. Woods informed her that as soon as he had a Psychologist IV position she would receive the Psychologist III position.

Dr. Caldwell-Barr testified in substance that towards the end of her time in the mental health unit there were so many inappropriate things happening,

and that there was a responsibility to report these things, and that she went to Dr. Woods and told him that these things were “unethical.” According to Dr. Caldwell-Barr, this was when Dr. Woods told her that she was un-supervisable, and that she “acted like an African-American female.”

Additionally, Dr. Caldwell-Barr stated in substance that Dr. Lewis told her that Dr. Woods had told him that he would make sure that Dr. Caldwell-Barr never promoted as long as he (Dr. Woods) was supervising her.

Additionally, Dr. Caldwell-Barr stated in substance that Dr. Kyle told her that when he went to interview for the Psychologist III position Dr. Woods let him know that the position was his.

With respect to the inmate placed on suicide watch, Dr. Caldwell-Barr stated in substance that she had a good working relationship with the vast majority of inmates, including the inmate who had been deemed suicidal. Dr. Caldwell-Barr stated that she had not been seeing the inmate, but that he was being seen monthly pursuant to protocol by Dr. Garma-Hoff, that the inmate was being checked on, and the inmate had stated that he had no plan or intent to commit suicide. According to Dr. Caldwell-Barr, there was no indication that the inmate was suicidal.

Dr. Caldwell-Barr testified in substance that she was aware of NOTIS, and entered data into it, including inmate treatment notes, case notes, prison rape allegations (hereinafter “PREA”, acronym for Prison Rape Elimination Act) and assaults. Dr. Caldwell-Barr was questioned about incident reports concerning professional misconduct that alleged she yelled at inmates, threatened and ridiculed them, and she indicated that she had never been notified about the reports, and that if she went into NOTIS she would be unable to see the reports. Dr. Caldwell-Barr also stated that the reports had been entered by Dr. Woods.

Dr. Caldwell-Barr stated in substance that she was qualified to be both a Psychologist III and a Psychologist IV, and had applied for those positions, but was not selected. Dr. Caldwell-Barr also stated in substance that she believed that the negative NOTIS reports made it more difficult for her to promote.

Dr. Caldwell-Barr testified in substance that she believed that Dr. Woods left his employment with the State early in 2018, perhaps in March or May 2018, and that the positions that she had applied for but had not received had opened after her discussion with Dr. Woods about his alleged unethical behavior. Dr. Caldwell-Barr further testified in substance that she was not aware that NDOC had posted departmental promotional recruitments and open competitive recruitments that required a new application to be submitted, and that she had not submitted an application for some of the positions because she believed that her name was on a certified list that was to be used to choose potential candidates for the positions.

IG DelPorto testified in substance that she had been with NDOC since 2002, was familiar with NOTIS, and that NDOC had been using NOTIS since 2003 or 2004. According to IG DelPorto, initially NOTIS was used to report

unusual events or occurrences related to NDOC and information related to inmates. According to IG DelPorto, AR (Administrative Regulation) 332 mandated that certain incidents be reported within 24 hours or on an NDOC employee's shift.

IG DelPorto explained that NOTIS was also used as a mechanism to report things to her and the Inspector General's Office, such as PREA allegations, inmate grievances or contraband allegations. IG DelPorto testified in substance that the assigned security level of an IR (incident report) would determine who could read the IR in NOTIS. IG DelPorto also stated in substance that, as a law enforcement agency, if NDOC staff saw something, that had to say something and report the concerning event, but that this did not mean that the event/incident actually happened or was accurate, and that if it was felt there was merit to the IR it would be referred to the Inspector General's Office for possible investigation. According to IG DelPorto if the IR was not investigated it was still maintained, but this did not mean the IR was accurate.

IG DelPorto also testified in substance that she was not aware of any communication being sent out within NDOC telling staff not to let an employee know if there was a report on the employee in NOTIS. With respect to background checks, IG DelPorto stated that for PREA, it was required prior to hiring or promoting NDOC employees that the IG was to make sure there were no sustained allegation of staff on inmate sexual abuse or harassment, and that the Inspector General's Office searched through NOTIS for such allegations and reported the results to HR (Human Resources). If a background clearance check was received by the IG's Office, then they reviewed NOTIS specifically for sustained allegations of information.

IG DelPorto explained in substance that an investigation was assigned to an investigator after the NDOC Director was notified of the investigation of an NDOC employee, and that event started a 30 day "clock." IG DelPorto stated in substance that prior to the 30-day clock expiring the NDOC employee being investigated had to be notified of the investigation, but that did not mean the employee being investigated was interviewed. IG DelPorto further stated that once the investigation report was finished it went to the investigator's supervisor, who reviewed it for completeness, after which the report was sent to an adjudicator. IG DelPorto testified in substance that then an adjudicator reviewed the report and decided whether the allegations in the report were founded or unfounded or sustained or not sustained or exonerated. IG DelPorto explained that from the adjudicator the investigated employee was notified that the investigation was finished, and that if the investigation would result in charges then NDOC had to go to the State Attorney General's Office for its review. IG DelPorto also testified in substance that if an employee was not investigated there were no ARs that required that the employee be notified of the existence of a report.

IG DelPorto also testified in substance that not everything entered into NOTIS as a result of inmate complaints was investigated, and there had to be something to support that the allegations may have occurred. If the allegation might have occurred, IG DelPorto stated in substance, the next

step for her was to ask whether the matter was something that could be handled through employee performance reviews.

IG DelPorto also stated in substance that a supervisor could file a report in NOTIS that an employee had engaged in neglect of duty. IG DelPorto further stated that she was not aware that some supervisors were reviewing NOTIS prior to making transfer decisions.

With respect to inmate grievances against NDOC employees, IG DelPorto testified in substance that the inmate can drop his grievance in a confidential grievance box or send it via "kite." The grievance was then processed by the coordinator and might involve the participation of the associate warden, and the grievance might be sent to the Inspector General's Office. IG DelPorto further testified in substance that IRs were not removed unless they were duplicative.

IG DelPorto in substance testified that she believed that there were two IRs in the past involving Dr. Caldwell-Barr that had been assigned for investigation, and she believed that the IRs were found unsubstantiated. IG DelPorto stated in substance that whether or not an IR was found substantiated or unsubstantiated was not linked to the IR, and that one "had to go looking for it," and that people with certain profiles in NOTIS had the ability to search and see if IRs had been substantiated or not.

Ms. Leathers testified in substance that generally when NDOC opened recruitments, especially with the psychology series, it struggled for qualified candidates, and that it was possible that NDOC could only get one eligible candidate for a position, and that NDOC would only be required to interview that one candidate. Ms. Leathers also testified in substance that if a candidate did not meet NDOC's needs, then NDOC could go through DHRM (Division of Human Resource Management) in obtaining another list of candidates or opening the recruitment in a different manner. Once a hiring manager made a decision on who the selected candidate was, Ms. Leathers stated in substance, NDOC performed a series of pre-employment clearances.

Ms. Garton testified in substance that the State law or policy regarding confidential employee files, and employee access to those files, was covered in NAC 284.718 and NAC 284.726, and that the employee was entitled to see things like performance, conduct, leave balance, phone numbers and Social Security numbers, and that access to that information was limited by NAC.

The Committee deliberated on grievances No. 5751. It was stated in substance by Chair Puglisi that the reports in NOTIS were similar to an employee's working file, and that if requested, a State employee was entitled to see his or her working file. It was stated in substance by IG DelPorto that she had never been asked by an NDOC employee to see all of their IRs.

Member Laney stated in substance that if an inmate had a concern or was bringing a report forward, the appropriate place for doing so would not be

in the NDOC employee's personnel file, and that it seemed the only appropriate place would be in NOTIS.

Member Thompson questioned why employee on employee matters would be tracked in NOTIS and was told by IG DelPorto that AR 332 required the tracking of unusual occurrences, and that there was no other central reporting mechanisms at NDOC's disposal that she was aware of for the reporting of such events.

Chair Puglisi stated in substance that he was unclear of what Dr. Caldwell-Barr meant for a remedy when she said she wanted to be "made whole," and that he did not know if any kind of pattern had been shown by Dr. Caldwell-Barr.

Member Bauer stated in substance that she was struggling with the idea of employment records being maintained in NOTIS, and that it looked like NOTIS was being used to keep secret employee files, and that this was a violation of NAC 284. Member Bauer also stated that she did not believe that the Committee had the authority to fully grant the relief wanted by Grievant in Grievance No. 5751, and that some of the behavior complained of stemmed from an employee who no longer worked for NDOC.

Member Bauer also state in substance that she had not heard where the information in NOTIS was volunteered to employees, or that NDOC would know how to treat a request for such records, and so that led to a secret file being created.

Member Laney stated in substance where she could see, based on Grievance No. 5751, where it could be perceived that the information in NOTIS was being kept as a secret personnel file, but was struggling with the matter, and asked whether the Committee could tell NDOC that it could not report on employees, but report on inmates, and how to report each one if they were intertwined. Member Laney also stated in substance that she did not feel that the entries put into NOTIS directly impacted Dr. Caldwell-Barr, even though she experienced hardship at the hands of a supervisor who treated her unfairly. Member Laney noted in substance that the Grievant had applied for two positions, one on 3/28/2017, with an outside agency that apparently could not see NOTIS entries, the other on September 13, 2018, where Grievant was selected for an interview, but not selected for the position, and that it did not appear from the testimony that it could be proven that the candidate selected in September was more or less qualified than the Grievant.

Member Bauer stated in substance that it appeared Grievant had applied for two recruitments that may or may not have warranted an interview for Grievant, around the time of or after Dr. Caldwell-Barr's original grievance, but that she could not tell this for sure, and NDOC was unable to say how many other vacancies existed for which an eligible list could have been pulled, and that the Committee did not know if the Grievant's name was on that list or not, but that the evidence the Committee did have appeared to be an application search using Grievant's name.

Member Novotny stated in substance that Dr. Caldwell-Barr had three incidents that were put into NOTIS by Dr. Woods, that were not investigated and that could just “sit out there forever,” without the Grievant necessarily knowing about them, and with other people being able to view them, and that this was disturbing.

Member Thompson agreed with Member Novotny and thought this fact could definitely have an impact on someone who was looking to hire someone for a position at NDOC.

Chair Puglisi stated in substance that if he made a case note in a case narrative that someone else did something wrong in that case then the person commented on would not know about it, but that it would not really be a secret, and no way for the person commented on to know about the comment unless he told the person about the case note.

Chair Puglisi also stated in substance that he felt like the grievance was the result of a personality conflict with the former supervisor who was now gone, and that the Committee could not promote Grievant to a Psychologist III, and that the grievance hearing itself was due process.

It was also noted in substance by Member Thompson that the Committee could not order NDOC to stop using NOTIS, but that the Committee could make an advisory note to the Governor’s Office that there were personnel files being kept on NOTIS, and have the Governor take any action he chose to take.

Member Russell said in substance that she was disturbed about the way NOTIS had not stayed within its theoretical intended use, and that there should be a way for employees to request information from NOTIS about themselves.

Member Bauer stated in substance that unsubstantiated serious allegations made by management were being used for employment decisions, and that the allegations were secret because the employees would now know about their existence.

Chair Puglisi stated in substance that he looked at the fact that there were no disciplinary actions taken against Grievant, and that when someone is promoted in an agency there is usually a “jacket check” process, and if there was no employee discipline that should say the NOTIS incident reports were unsubstantiated.

Member Russell also stated in substance that because there were files that were not available to the employee but contained information related to the employee they fit the definition of secret files.

However, Chair Puglisi stated in substance that there had been testimony that anyone in NDOC could go into NOTIS and pull up information about themselves, although they might not be able to read everything in an incident report, and that he thought that the issue was training.

Member Bauer asked in substance if there was an occurrence where an NDOC employee staff member who was not a supervisor could have records about the employee and be unable to see those records upon the employee's own search, and in response IG DelPorto responded in substance that the employee would be able to, under staff reports, see the IR, and if the employee had questions about the IR the employee could contact his or her supervisor or any Inspector General staff and, depending on what exactly was in the report, the report would be provided with necessary redactions.

Member Thompson stated in substance that she thought it had been established that there were private files being maintained by NDOC. Member Bauer responded she was leaning towards the opinion that NOTIS records (on NDOC employees) were only secret in that the employee did not know about them.

Member Russell stated in substance that she noted that testimony indicated that there were instances where there could be an investigation that had gone on but that the employee was not notified until the investigation reached a certain point, so to her that led further into the non-accessible files or notations that made the incident reports secret because they were non-accessible to the employee.

Chair Puglisi stated in substance that when he managed employees he had an employee narrative, and that he did not tell employees he managed every time that he made an entry, but that if an employee wanted to see his or her file he could show it to them.

Member Russell stated in substance that when it came to hard copies of employee files there was an official file with Human Resources that could be viewed by the employee, but the employee would need to go specifically to his or her supervisor for the working file, and the file would not be accessible to anyone else in the room, and that the file was not shared with other supervisors unless the employee file was requested by that supervisor.

Member Puglisi pointed out in substance that the employee file with Human Resources would not have certain documents, such as letters of instruction, that might be purged over time, and that now everything was electronic, and that he had access to his subordinates' files.

Member Bauer stated in substance that it was clear the Committee had concerns with the record keeping, but that she still did not believe that the Committee could grant the remedy sought by Grievant, and so the grievance would have to be denied, but the Committee needed to consider making recommendations that review of the employee's file be revisited.

Additionally, Member Bauer in substance made recommendations that NDOC should be encouraged to review policy and procedure to ensure compliance with NAC 284.734 and NRS 284.420, provide communication and training to staff on the use of employee records in NOTIS, and ensure transparency where appropriate for employee records in NOTIS.

Chair Puglisi expressed concern with using NRS 284.420 in any motion.

Chair Puglisi proposed a motion where he moved to deny Grievance No. 5751 because there was no evidence proving NDOC violated NAC 284.734, in that the records in NOTIS were accessible to every employee to the extent they knew an incident report existed; however, it appeared that NDOC did not provide adequate training on how to access or request those reports. Furthermore, there was no evidence that NRS 284.420 was violated to obstruct promotional opportunities of the Grievant.

Member Bauer stated in substance that she could not support Chair Puglisi's motion because she did not agree with the contents of the statement.

Member Bauer also stated that she did not believe the Committee could grant the grievance in the form of the requested remedy because the Committee did not have the authority to do so.

Member Bauer also stated in substance that she did not agree with the sections of Chair Puglisi's motion that referenced no evidence with respect to the NDOC's violation of regulation, policy or law because she felt there was evidence of such.

Chair Puglisi subsequently withdrew his motion.

Member Russell in substance suggested a modification that the evidence submitted today was not enough to meet the Grievant's burden of proof.

Member Bauer stated in substance that the issue was there was not a preponderance of evidence that the agency did not violate a law or regulation, and so if the motion were to include language that NDOC definitively did not violate law or regulation then that was a concern.

Member Bauer also stated in substance that she did not feel there was significant proof for Grievance No. 5751 either way in terms of whether there was a violation of law or regulation with respect to the records in NOTIS.

Member Bauer continued on that the Committee had heard testimony on what Dr. Woods had specifically stated in terms of preventing the Grievant from receiving an interview or promotional opportunity.

Member Russell stated in substance that in Grievance No. 5751 Grievant had not met the burden that both NAC 284.734 and NRS 284.420 had been violated.

Member Bauer indicated in substance that it was a concern for her that the Committee did not have the authority to grant two of the Grievant's proposed remedies, in that the Committee could not direct the employer to compensate Grievant at a level comparable to a Psychologist III, nor could the Committee direct that Grievant be promoted to a Psychologist III.

Member Russell stated in substance that the Committee needed to address the regulations or the NRS⁵ that were alleged or referenced in the grievance.

Chair Puglisi asked in substance if he changed the wording of his prior motion from “no evidence” to “no preponderance of evidence” if that would be more acceptable.

Member Novotny stated in substance that she recalled when Mr. Sandie testified he specifically said he was not to tell employees about the “file,” and the information that was in it, and that he was an associate warden.

Member Bauer in substance asked about a motion stating that the Committee moved to deny the grievance based on the lack of preponderance of evidence that NDOC violated NAC and NRS, but that it was the Committee’s recommendation that NDOC take certain actions.

Member Bauer made a motion to deny Grievance No. 5751 based on the lack of preponderance of the evidence that NDOC violated NAC 284.734 or NRS 284.420. However, it was the Committee’s recommendation that NDOC review policy and procedure to ensure compliance with NAC 284.734 and NRS 284.420; provide communication and training to staff on the use of employee records in NOTIS; and ensure transparency, where appropriate, for employee records in NOTIS.

Chair Puglisi seconded Member Bauer’s motion. The Committee voted to deny Grievance No. 5751.⁵

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, and 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 is a Psychologist II employed by NDOC at Lovelock in Nevada.
3. Grievant had been previously employed at NNCC until transferring to Lovelock in June 2017.
4. Grievant had worked at NNCC for two years and four months prior to transferring to Lovelock.
5. Grievant worked as a Psychologist II at NNCC.
6. NDOC maintains a database known as NOTIS.
7. NDOC uses NOTIS for various purposes, including maintaining reports or files on its employees.
8. The files maintained in NOTIS might include diverse events ranging from events concerning inmates, allegations of assault against NDOC employees, and allegations that an NDOC employee was late for work or neglected his or her duty.

⁵ Five Committee members voted for Member Bauer’s motion to deny Grievance No. 5751; Member Novotny voted against the motion to deny Grievance No. 5751.

9. NDOC's AR 332 mandates that NDOC employees report certain incidents within 24 hours or before the end of the employee's shift, and NOTIS was used for reporting these incidents.
10. Once a report was entered into NOTIS, it was assigned a tracking (IR) number.
11. If an incident was not investigated there was no requirement that an NDOC employee be notified of the existence of a report on the employee in NOTIS.
12. An IR would remain in NOTIS indefinitely if not investigated.
13. Grievant filed a formal grievance about concerns she had with the NDOC mental health department in February 2017.
14. During the time period between March 3, 2017 and March 23, 2017, three files (IRs) were created in NOTIS on Grievant by Dr. Woods.
15. The three files or IRs concerned allegations of misconduct against Grievant, such as yelling at inmates or ridiculing them, or creating a dangerous situation for an inmate.
16. Grievant applied for two Psychologist level positions after she filed in February 2017.
17. Grievant was not selected for the positions.
18. One of the Psychologist level positions was with NDOC, and in theory could have been impacted by Dr. Caldwell-Barr filing her grievance.
19. The other Psychologist level position was with an outside agency that would not have had access to NOTIS.
20. Grievant had not submitted a new application for at least one of the positions with NDOC, as she believed that her name was on a certified list that would be used to choose potential candidates.
21. It was not proven that the candidates selected for the positions for which Grievant had applied were more or less qualified for the positions than Grievant.
22. NDOC employees could request to see IRs in NOTIS about themselves and would be allowed to see those IRs with necessary redactions.
23. NDOC did not volunteer employee information about NOTIS to its employees, or provided adequate training to its employees on how to access or request IRs in NOTIS.

CONCLUSIONS OF LAW

1. For this grievance, it was Grievant's burden to establish, by a preponderance of the evidence, her allegations that NDOC had violated NRS 284.420 through defeating, deceiving and obstructing her right to appointment, and that NDOC had violated NAC 284.734 by maintaining secret files on her.
2. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
3. A grievance is any act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the

relationship between an employer and an employee. NRS 284.384(6).

4. Dr. Caldwell-Barr's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
5. It could not be proven by Grievant by a preponderance of the evidence that NDOC had violated NRS 284.420. In particular, Grievant had applied for two psychologist positions, one with NDOC, after she filed her grievance with the EMC in February 2017. However, there was no evidence to prove by a preponderance that the files maintained in NOTIS by NDOC defeated or obstructed any promotional opportunity for Grievant. Additionally, it was not shown that the people chosen for the positions Grievant had applied for were more or less qualified than Grievant.
6. It was not proven by a preponderance of the evidence that NDOC maintained secret files in violation of NAC 284.734. Although the evidence presented demonstrated that NDOC provided inadequate training on how to request IRs/files in NOTIS or how employees could access those IRs and files, the IRs and files were not secret files because NDOC employees could in fact request to see the IRs and files on themselves with necessary redactions, such as (but not limited to) the identity of reporting inmates or the identity of staff against whom allegations of unlawful force had been made.
7. The Committee was unable to grant two of Grievant's proposed remedies because the Committee could not direct NDOC to compensate Grievant at a Psychologist III level, nor could the Committee order that Grievant be promoted to a Psychologist III.

DECISION

Ms. Caldwell-Barr's grievance No. 5751 was voted on and hereby DENIED.

MOTION: Moved to deny Grievance No. 5751 based on the lack of preponderance of the evidence that NDOC violated NAC 284.734 or NRS 284.420. However, it was the Committee's recommendation that NDOC review policy and procedure to ensure compliance with NAC 284.734 and NRS 284.420; provide communication and training to staff on the use of employee records in NOTIS; and ensure transparency, where appropriate, for employee records in NOTIS.

BY: Member Bauer

SECOND: Chair Puglisi

VOTE: The vote was 5 to 1 in favor of the motion, with Member Novotny voting 'nay'.

7. **Discussion and possible action related to Grievance #5752 of Sonnette Caldwell-Barr, Department of Corrections – Action Item**

This matter came on for hearing before the Employee-Management Committee (EMC) on December 13, 2018 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance No. 5752, filed by Sonnette Caldwell-Barr (“Grievant” or “Dr. Caldwell-Barr”). Dr. Caldwell-Barr was represented by counsel, Casey A. Gillham, Esq. Christina Leathers, Human Resources Manager, represented the agency/employer, the State of Nevada Department of Corrections (“NDOC”). Dr. Caldwell-Barr’s Grievance No. 5752 was heard simultaneously with Grievance No. 5751.

There were no objections to the exhibit packets submitted by the parties. Verne Lewis (“Dr. Lewis”), NDOC Psychologist III, Bradley Kyle (“Dr. Kyle”), NDOC Psychologist III, Karina Garma-Hoff, (Dr. Garma-Hoff”) NDOC Psychologist II, William Sandie (“Mr. Sandie”), former Associate Warden for NDOC, and Grievant were sworn in and testified on behalf of Dr. Caldwell-Barr. Christina Leathers (“Ms. Leathers”) and NDOC Inspector General Pamela Del Porto (IG DelPorto”) were sworn in and testified on behalf of NDOC. Additionally, State of Nevada, Department of Human Resources Management (“DHRM”) Michelle Garton (“Ms. Garton”) Supervisory Personnel Analyst was also present and provided testimony in the matter.

STATEMENT OF THE CASE

Dr. Caldwell-Barr is employed with NDOC as a Psychologist II at the Lovelock Correctional Center in Lovelock, NV (“Lovelock”). Previously, Dr. Caldwell-Barr was employed at the North Nevada Correctional Center (“NNCC”) until transferring to Lovelock in June 2017.

Dr. Caldwell-Barr argued in substance that NDOC had violated NAC 284.662(2), which states that a State employee:

may not be discriminated against in recruitment, examination, appointment, training, promotion, retention, classification or any other personnel action for informally seeking or formally filing a request to have his or her grievance or complaint reviewed, testifying on behalf of another employee, helping another employee prepare a grievance or complaint or acting as a representative of any employee requesting a review of a grievance or complaint.

Mr. Sandie testified in substance that he had retired in May 2018 as Associate Warden at Lovelock, where he had been an Associate Warden for approximately 6 years prior to his retirement.

Mr. Sandie further testified in substance that he helped test NOTIS when it was installed, and that its original purpose was to track inmates and inmate issues.

Mr. Sandie stated in substance that by the end of his career with NDOC NOTIS had become “all encompassing” and functioned as a sort of “catch-all.”

Mr. Sandie stated in substance that at some point in time NDOC began requiring supervisors to report events/incidents in NOTIS, including events such as employees being late for work, and that supervisors could see this on NOTIS, but that the employee did not know the entries were there.

Mr. Sandie testified in substance that NDOC supervisors throughout the State could see these reports, but that the employees could not see the reports, and that the employees were not made aware of the entries, and that “they” were told not to make employees aware of the entries in NOTIS.

Mr. Sandie also stated in substance that at his access level he could view reports in NOTIS that had been filed on psychologists at NNCC.

Mr. Sandie testified that he was familiar with Dr. Caldwell-Barr, and that prior to Dr. Caldwell-Barr coming to work at Lovelock he had a conversation with the warden at Lovelock about Grievant.

Mr. Sandie stated in substance that the warden was concerned about Dr. Caldwell-Barr coming to Lovelock due to the grievance she had filed, but that NDOC needed a psychologist at Lovelock.

Mr. Sandie added that Carson City (NNCC) tended to attack its employees, and that he wanted to give Dr. Caldwell-Barr a chance to perform at Lovelock to see how she performed.

Mr. Sandie further testified in substance that the warden indicated to him that she had seen things in NOTIS about Dr. Caldwell-Barr, and that Grievant could be a problem. Mr. Sandie added in substance that it had been great working with Dr. Caldwell-Barr.

Mr. Sandie stated in substance that he was involved in some hiring decisions, and that he looked at NOTIS prior to making offers to employees, especially for employees who wanted to transfer to Lovelock.

Mr. Sandie testified in substance that an employee might have the opportunity to respond to a report in NOTIS if there was an investigation associated with the report; otherwise, an employee might not know that the report in NOTIS existed.

Mr. Sandie also stated in substance that he was involved in the hiring of Dr. Nathan Woods (“Dr. Woods”), and that after the hiring of Dr. Woods he had no involvement in the hiring of mental health professionals at Lovelock.

Mr. Sandie also clarified that he could not speak to what the Lovelock Warden, Renee Baker, saw, but he assumed that she looked at the reports in NOTIS because that is what they all did, and that she brought up information in conversation that she could have only known by reviewing NOTIS.

Mr. Sandie also testified in substance that after his conversation with Warden Baker he looked in NOTIS for reports on Dr. Caldwell-Barr, and that he thought a couple of the reports may have been investigated by the NDOC Inspector General’s Office.

Mr. Sandie said in substance that to him NOTIS was a database used as a file system by NDOC to track staff, and that he had been asked to go into NOTIS to review reports by Warden Baker, and that it was common practice to review reports on NOTIS anytime Lovelock had an employee transfer to that facility.

Mr. Sandie also testified in substance that one might not always be able to see the resolution to a report in NOTIS, as there might not be a resolution as to whether the allegation was substantiated or unsubstantiated, and that seeing a resolution if one was stated depended on an employee's level of access.

Dr. Lewis testified that he was a Psychologist III who worked at Lovelock, and that he was familiar with Dr. Caldwell-Barr.

Dr. Lewis testified in substance that he remembered a conversation that he had with Warden Baker at Lovelock about Dr. Caldwell-Barr prior to Dr. Caldwell-Barr coming to Lovelock.

Dr. Lewis said that the conversation concerned Dr. Lewis requesting that Dr. Caldwell-Barr be allowed to transfer to Lovelock, and that Warden Baker stated that she did not want any problems. At the time Warden Baker said this to Dr. Lewis he stated in substance that he had no idea why Warden Baker said this and had assumed that it was because of a conversation with Dr. Woods, but now he realized that Warden Baker's statement did not require a conversation with Dr. Woods.

Dr. Lewis also testified in substance that Dr. Woods was a Psychologist II who he had hired in February 2014.

Dr. Lewis stated in substance that after some months Dr. Woods then promoted to the Psychologist III position at NNCC, and then later to an interim Psychologist IV position. Dr. Woods was Dr. Caldwell-Barr's supervisor in both his Psychologist III and IV positions.

Dr. Lewis testified in substance that he recalled conversations that he had with Dr. Woods about Dr. Caldwell-Barr, and that Dr. Woods spoke to him negatively about Dr. Caldwell-Barr, saying that she was difficult, and maybe even impossible to supervise, and that she was a 'difficult' personality.

Dr. Lewis also testified in substance that Dr. Woods stated that Dr. Caldwell-Barr would never promote to Psychologist III so long as it were up to him. Dr. Lewis also indicated that everyone knew there was "tension" between Dr. Caldwell-Barr and Dr. Woods.

Dr. Lewis also stated that he currently supervised Dr. Caldwell-Barr, and that she was professional, well-equipped, skilled, and that she was not difficult to supervise and worthy of promotion.

Dr. Lewis also testified in substance that he had no evidence of Dr. Caldwell-Barr not being considered for positions based on reports about her in NOTIS.

Dr. Kyle testified in substance that he currently worked at NNCC and had worked there “going on two years.” Dr. Kyle stated that he had held the position of Psychologist II at Lovelock, and that he was familiar with Dr. Caldwell-Barr, and that he had worked with her at NNCC.

Dr. Kyle, a Psychologist II, stated in substance that Dr. Woods had asked him to investigate Dr. Caldwell-Barr by having him contact various inmates and determine what took place between the inmates and Dr. Caldwell-Barr, since Dr. Woods had a number of kites⁶ that allegedly came from these inmates about Grievant.

According to Dr. Kyle the investigation took place in about March 2017. Dr. Kyle stated in substance that there was no basis to the allegations that Dr. Caldwell-Barr was incompetent or mistreating inmates.

Dr. Kyle testified in substance that when he presented these findings to Dr. Woods his reaction was negative, and that Dr. Woods basically dismissed him from his office.

Dr. Kyle also testified in substance that he did not believe that Dr. Woods treated Dr. Caldwell-Barr fairly, and that on occasion Dr. Woods gave his opinion of Dr. Caldwell-Barr, and that his opinion was consistently negative.

Dr. Kyle also testified in substance that he had no evidence that NOTIS entries were used against Dr. Caldwell-Barr in order to not give her opportunities to promote.

Dr. Garma-Hoff testified in substance that she was a mental health clinician who worked at NNCC. Dr. Garma-Hoff stated in substance that she had the duties of a Psychologist II, and that Dr. Caldwell-Barr had been her supervisor for almost a year when she was first hired.

Dr. Garma-Hoff testified that around March 2017, she recalled an inmate being placed on suicide watch, and was present when a psychologist interviewed the inmate. Dr. Garma-Hoff testified in substance that the inmate was visibly upset, and questioned why he was on suicide watch. Dr. Garma-Hoff stated in substance that the inmate said that the day prior he was in his unit and an officer came to his bunk and told him that Dr. Kyle wanted to see him in Unit A. The inmate went to Unit A, and there met with Dr. Woods.

According to Dr. Garma-Hoff, the inmate stated that Dr. Woods asked him questions about Dr. Caldwell-Barr, and that the inmate had stood up for “Dr. C-B,” and that as a result, he had ended up on suicide watch.

Dr. Garma-Hoff stated in substance that after this incident the inmate asked to go back to the unit where Dr. Caldwell-Barr worked, and that she did not

⁶ “KITES” is a form used by inmates to file a complaint and is used before the inmate grievance process.

hear or see anything while listening to the inmate to make her believe that he was suicidal.

Dr. Garma-Hoff said that she did not know if it was common practice to be asked by the warden or other mental health staff to investigate a grievance or kite issued by an inmate.

Dr. Garma-Hoff also testified that she did not know if this incident had any impact on Dr. Caldwell-Barr getting a promotion.

The Grievant testified in substance that she was a Psychologist II at Lovelock, and had worked there for about one year and six months, and before that had worked for two years and four months at NNCC.

Dr. Caldwell-Barr stated in substance that she had complaints in February 2017 about NDOC's mental health department, and that initially she emailed NDOC Deputy Director Tristan and Interim Mental Health Director Dr. Roy Hookum about her concerns.

According to Grievant, when Deputy Director Tristan emailed his response that he would meet with her to address her concerns he cc'd everyone she had lodged a complaint against, which included Dr. Woods.

Grievant testified in substance that her concerns were not resolved as a result of her email, and so she filed a formal grievance (in February 2017), which the EMC determined was outside of its jurisdiction.

Grievant stated in substance that as a result of filing her grievance, her working conditions became "impossible."

Grievant stated that she had inmates coming to her and telling her that Dr. Woods was investigating her, and that the inmates said Dr. Woods was "vengeful."

Dr. Caldwell-Barr said she did not know where or when Dr. Woods would go after her next, and that an Inspector General investigation followed her from NNCC to Lovelock for doing a Static 99 for an inmate for the Parole Board and for using information from a PSI (pre-sentence investigation) in a sex offender treatment group.

Dr. Caldwell-Barr testified in substance that per NRS she was required to draft the Static 99 Form or it would have been considered insubordination, and that bringing out information from PSIs in group treatment was a legitimate treatment tool in some instances.

Dr. Caldwell-Barr stated in substance that prior to filing her grievance Dr. Woods informed her that as soon as he had a Psychologist IV position she would receive the Psychologist III position.

Dr. Caldwell-Barr testified in substance that towards the end of her time in the mental health unit there were so many inappropriate things happening,

and that there was a responsibility to report these things, and that she went to Dr. Woods and told him that these things were “unethical.”

According to Dr. Caldwell-Barr, this was when Dr. Woods told her that she was un-supervisable, and that she “acted like an African-American female.”

Additionally, Dr. Caldwell-Barr stated in substance that Dr. Lewis told her that Dr. Woods had told him that he would make sure that Dr. Caldwell-Barr never promoted as long as he (Dr. Woods) was supervising her.

Additionally, Dr. Caldwell-Barr stated in substance that Dr. Kyle told her that when he went to interview for the Psychologist III position Dr. Woods let him know that the position was his.

With respect to the inmate placed on suicide watch, Dr. Caldwell-Barr stated in substance that she had a good working relationship with the vast majority of inmates, including the inmate who had been deemed suicidal.

Dr. Caldwell-Barr stated that she had not been seeing the inmate, but that he was being seen monthly pursuant to protocol by Dr. Gamara-Hoff, that the inmate was being checked on, and the inmate had stated that he had no plan or intent to commit suicide.

According to Dr. Caldwell-Barr, there was no indication that the inmate was suicidal.

Dr. Caldwell-Barr testified in substance that she was aware of NOTIS, and entered data into it, including inmate treatment notes, case notes, prison rape allegations (hereinafter “PREA”, acronym for Prison Rape Elimination Act) and assaults.

Dr. Caldwell-Barr was questioned about incident reports concerning professional misconduct that alleged she yelled at inmates, threatened and ridiculed them, and she indicated that she had never been notified about the reports, and that if she went into NOTIS she would be unable to see the reports. Dr. Caldwell-Barr also stated that the reports had been entered by Dr. Woods.

Dr. Caldwell-Barr stated in substance that she was qualified to be both a Psychologist III and a Psychologist IV, and had applied for those positions, but was not selected. Dr. Caldwell-Barr also stated in substance that she believed that the negative NOTIS reports made it more difficult for her to promote.

Dr. Caldwell-Barr testified in substance that she believed that Dr. Woods left his employment with the State early in 2018, perhaps in March or May 2018, and that the positions that she had applied for but had not received had opened after her discussion with Dr. Woods about his alleged unethical behavior.

Dr. Caldwell-Barr further testified in substance that she was not aware that NDOC had posted departmental promotional recruitments and open

competitive recruitments that required a new application to be submitted, and that she had not submitted an application for some of the positions because she believed that her name was on a certified list that was to be used to choose potential candidates for the positions.

IG DelPorto testified in substance that she had been with NDOC since 2002, was familiar with NOTIS, and that NDOC had been using NOTIS since 2003 or 2004. According to IG DelPorto, initially NOTIS was used to report unusual events or occurrences related to NDOC and information related to inmates.

According to IG DelPorto, AR (Administrative Regulation) 332 mandated that certain incidents be reported within 24 hours or on an NDOC employee's shift.

IG DelPorto explained that NOTIS was also used as a mechanism to report things to her and the Inspector General's Office, such as PREA allegations, inmate grievances or contraband allegations.

IG DelPorto testified in substance that the assigned security level of an IR (incident report) would determine who could read the IR in NOTIS.

IG DelPorto also stated in substance that, as a law enforcement agency, if NDOC staff saw something, that had to say something and report the concerning event, but that this did not mean that the event/incident actually happened or was accurate, and that if it was felt there was merit to the IR it would be referred to the Inspector General's Office for possible investigation.

According to IG DelPorto if the IR was not investigated it was still maintained, but this did not mean the IR was accurate.

IG DelPorto also testified in substance that she was not aware of any communication being sent out within NDOC telling staff not to let an employee know if there was a report on the employee in NOTIS. With respect to background checks, IG DelPorto stated that for PREA, it was required prior to hiring or promoting NDOC employees that the IG was to make sure there were no sustained allegation of staff on inmate sexual abuse or harassment, and that the Inspector General's Office searched through NOTIS for such allegations and reported the results to HR (Human Resources). If a background clearance check was received by the IG's Office, then they reviewed NOTIS specifically for sustained allegations of information.

IG DelPorto explained in substance that an investigation was assigned to an investigator after the NDOC Director was notified of the investigation of an NDOC employee, and that event started a 30 day "clock."

IG DelPorto stated in substance that prior to the 30-day clock expiring the NDOC employee being investigated had to be notified of the investigation, but that did not mean the employee being investigated was interviewed.

IG DelPorto further stated that once the investigation report was finished it went to the investigator's supervisor, who reviewed it for completeness, after which the report was sent to an adjudicator.

IG DelPorto testified in substance that then an adjudicator reviewed the report and decided whether the allegations in the report were founded or unfounded or sustained or not sustained or exonerated.

IG DelPorto explained that from the adjudicator the investigated employee was notified that the investigation was finished, and that if the investigation would result in charges then NDOC had to go to the State Attorney General's Office for its review. IG DelPorto also testified in substance that if an employee was not investigated there were no ARs that required the employee be notified of the existence of a report.

IG DelPorto also testified in substance that not everything entered into NOTIS as a result of inmate complaints was investigated, and there had to be something to support that the allegations may have occurred. If the allegation might have occurred, IG DelPorto stated in substance, the next step for her was to ask whether the matter was something that could be handled through employee performance reviews.

IG DelPorto also stated in substance that a supervisor could file a report in NOTIS that an employee had engaged in neglect of duty. IG DelPorto further stated that she was not aware that some supervisors were reviewing NOTIS prior to making transfer decisions.

With respect to inmate grievances against NDOC employees, IG DelPorto testified in substance that the inmate can drop his grievance in a confidential grievance box or send it via "kite." The grievance was then processed by the coordinator and might involve the participation of the associate warden, and the grievance might be sent to the Inspector General's Office. IG DelPorto further testified in substance that IRs are not removed unless they were duplicative.

IG DelPorto in substance testified that she believed that there were two IRs in the past involving Dr. Caldwell-Barr that had been assigned for investigation, and she believed that the IRs were found unsubstantiated. IG DelPorto stated in substance that whether or not an IR was found substantiated or unsubstantiated was not linked to the IR, and that one "had to go looking for it," and that people with certain profiles in NOTIS had the ability to search and see if IRs had been substantiated or not.

Ms. Leathers testified in substance that generally when NDOC opened recruitments, especially with the psychology series, it struggled for qualified candidates, and that it was possible that NDOC could only get one eligible candidate for a position, and that NDOC would only be required to interview that one candidate.

Ms. Leathers also testified in substance that if a candidate did not meet NDOC's needs, then NDOC could go through DHRM (Division of Human Resource Management) in obtaining another list of candidates or opening

the recruitment in a different manner. Once a hiring manager made a decision on who the selected candidate was, Ms. Leathers stated in substance, NDOC performed a series of pre-employment clearances.

Ms. Garton testified in substance that the State law or policy regarding confidential employee files, and employee access to those files, was covered in NAC 284.718 and NAC 284.726, and that the employee was entitled to see things like performance, conduct, leave balance, phone numbers and Social Security numbers, and that access to that information was limited by NAC.

The Committee deliberated separately on grievances No. 5752.

The Grievant stated in substance, after being questioned by Member Bauer, that her requested remedy was to be made whole, which included back pay at a Psychologist III level from February 2017 to the present.

Chair Puglisi noted that the situation in this Grievance, No. 5752, was similar to Grievance No. 5751, but involved a different statute, which said in essence an employee should not be discriminated or retaliated against for filing a grievance in the recruitment or other processes.

Chair Puglisi stated in substance that he felt that again there was not a preponderance of the evidence to show that NDOC had violated the law based on the evidence presented, and that there appeared to be testimony where the Grievant should have applied for certain positions but had not done so.

Chair Puglisi added that there was also testimony that Grievant had been interviewed one time by NDOC since filing her February 2017 grievance.

Member Bauer indicated in substance that she was struggling with Grievance No. 5752 because she did not think that testimony provided showed by a preponderance evidence of discrimination, but she felt like the evidence came closer to showing retaliation, in that the testimony provided indicated that Dr. Woods had, on multiple occasions, mentioned that Grievant would never be promoted as long as he was there.

Member Bauer stated that clearly, that was an effort to obstruct Grievant's effort to promote at NDOC, but in substance questioned whether the evidence met the preponderance level.

Member Laney noted in substance that in several places in the grievance the word retaliation was mentioned, and she agreed that retaliation came out of witness questioning, but asked if the Committee were to deny Grievance No. 5752 based on the proposed resolution, if there was a recommendation for moving the grievance to the venue for retaliation.

Chair Puglisi stated in substance that he did not know if the Committee would make such a recommendation. Chair Puglisi also pointed out in substance that NAC 284.696 indicated what discrimination was, and what avenues employees had to seek relief for alleged discrimination.

Member Bauer stated in substance that the reason she used the word retaliation as opposed to discrimination was because she did not think that NAC 284.696 was appropriate because this was not a Title VII discrimination case, and that witness testimony provided evidence that there was retaliation in terms of the NOTIS comments about Dr. Caldwell-Barr, and that there was an unfounded investigation, and that there were comments made to inmates, as well as comments made directly by Dr. Woods that he had no intention of promoting Grievant.

Member Puglisi pointed out that Dr. Woods left NDOC between March and May 2018 and questioned in substance how Dr. Woods could have retaliated against Grievant after that time, and that Grievant received an interview with NDOC after that time.

Chair Puglisi stated in substance that he thought the Committee had concluded the reason there was no interview for the other positions was because the lists used were old and were not used, or those recruitments were old and so there was no list pulled from those recruitments and the Grievant was not aware she had to reapply every time she was interested in a position.

Chair Puglisi also noted in substance that one application Grievant made was from March 2017, which was for an outside agency, and the other application was from September 2018, and was for a Psychologist IV position with NDOC, and that this was about 6 months after Dr. Woods left employment with NDOC.

Member Russell stated in substance that she felt that the Committee stating its recommendations once to NDOC in Grievance No. 5751 was enough.

Member Puglisi stated in substance that he was looking at the eligible list in NEATS, and he thought the Committee had concluded that the Grievant did not know she had to reapply every time a recruitment came out, and that there was a recruitment from 2016, but generally those expire after 12 months, which would leave the March 28, 2017 application, which was for a different agency, and then the September 13, 2018 application.

Member Bauer pointed out in substance that NDOC Exhibit D was an application search, not an eligible list, so it was unclear as to which eligible list Grievant was on and not on.

Member Bauer also stated in substance that what the Committee did not have in its packets as evidence was a section on the NEATS website where an employee can actually go in and look to see when his or her name has been pulled from existing lists and sent to agencies for vacancies, which would have shown when the name went out to an agency for a promotional vacancy, so the Committee was unable to tell if Grievant's name went to NDOC for vacancies for promotional opportunities.

Member Bauer also pointed out in substance that on page two of the Employee's Pre-Hearing Statement, and in the Exhibit Packet, it was

specifically alleged that in February 2018 Dr. Caldwell-Barr was also not given the opportunity to interview for a Psychologist IV position even though she was an eligible candidate.

Chair Puglisi stated in substance that according to testimony he understood that there were three different times that NDOC interviewed for either Psychologist III or IV, and that was in February 2017, August of 2018, and September 2018, the latter of which Grievant interviewed for. Chair Puglisi stated in substance that for February of 2017 interview there was a possibility that the Psychologist III list was still valid.

Member Puglisi made a motion to deny Grievance No. 5752 based on a lack of preponderance of evidence that the agency violated NAC 284. 662(2). Chair Puglisi's motion was seconded by Member Laney.

Member Thompson in substance suggested perhaps it should be stated in the motion that it was not established that Grievant's former supervisor had any influence over the interviewing or hiring process once he left NDOC.

Member Puglisi responded with a suggestion that the motion could be amended to add "since the Grievant's former supervisor no longer has influence over the hiring process."

Member Bauer stated in substance that just because the supervisor who allegedly caused a conflict was no longer at the agency did not mitigate an injustice being suffered by Grievant.

Member Puglisi clarified that Member Thompson's proposed amendment would add "since Grievant's former supervisor no longer has influence over the hiring process." Member Laney did not accept the proposed amendment, and so the motion remained as proposed by Member Puglisi. The Committee voted to deny Grievance No. 5752.⁷

FINDINGS OF FACT

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.
24. Grievant is a Psychologist II employed by NDOC at Lovelock in Nevada.
25. Grievant had been previously employed at NNCC until transferring to Lovelock until June 2017.
26. Grievant worked at NNCC for two years and four months prior to transferring to Lovelock.
27. Grievant worked as a Psychologist II at NNCC.

⁷ Four Committee members voted for Chair Puglisi's motion to deny Grievance No. 5752: Member Bauer, Member Laney, Member Thompson and Chair Puglisi. Member Russell and Member Novotny voted against the motion to deny Grievance No. 5752.

28. The NDOC employee who was alleged to have retaliated against Grievant left employment with NDOC between March and May 2018.
29. Grievant submitted a grievance to the Committee in February 2017.
30. Grievant submitted two applications related to employment after February 2017: one in March 2017, with an outside agency, the other on September 2018 with NDOC.
31. NDOC interviewed for Psychologist III and/or Psychologist IV positions on three different occasions, once in February 2017, once in August 2018 and once in September 2018.
32. Grievant was interviewed one time by NDOC since filing her February 2017 grievance, in September 2018.
33. Grievant was unaware that she had to reapply every time a recruitment came out.
34. It was unclear to the Committee from the evidence presented what eligible list for Psychologist level positions Grievant was on or not on.

CONCLUSIONS OF LAW

8. For this grievance, it was Grievant's burden to establish her allegations that NDOC had violated NAC 284.662(2) by retaliating against her for filing a grievance with the Committee in February 2017.
9. The EMC has the final authority to "adjust grievances." NRS 284.073(1)(e).
10. A grievance is any act, omission or occurrence which an employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee. NRS 284.384(6).
11. Dr. Caldwell-Barr's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
12. Grievant was unable to prove by a preponderance of the evidence that NDOC had violated NAC 284.662(2).
13. In particular, it was shown that the employee who allegedly retaliated against Grievant had left employment with NDOC in March or May 2018, and one of Grievant's applications with NDOC were filed after this time frame, while the other was with an outside agency. Additionally, it appeared that Grievant was unaware she needed to apply for a position every time a recruitment came out. Furthermore, Grievant received an interview with NDOC for a Psychologist position in September 2018. Finally, it was not shown that the people interviewed and chosen for the positions Grievant had applied for were more or less qualified than Grievant.

DECISION

Ms. Caldwell-Barr's grievance No. 5752 was voted on and hereby DENIED.

MOTION: Moved to deny Grievance No. 5752 based on a lack of preponderance of evidence that the agency violated NAC 284. 662(2).
BY: Chair Puglisi
SECOND: Member Laney
VOTE: The vote was 4 to 2 in favor of the motion, with Member Russell and Member Novotny voting 'nay'.

Member Bauer asked if under open meeting law, it was permissible for the Chair to approve postponing an agenda item to a subsequent meeting.

Member Bauer stated there were justifiable needs in the North to postpone agenda item #13 (grievance #5653).

Mr. Whitney stated it would be justifiable if there was a reason and the agenda item could be placed on the agenda for the next meeting.

Chair Puglisi asked what the issue was.

Member Bauer stated the agency for agenda item #13 had the issue but there were time constraints for some Committee members as well.

Mr. Whitney stated the Committee has held over agenda items before and there was good cause in this case.

Chair Puglisi asked Coordinator Johnson if the Committee set agenda item #13 aside, would agenda item #13 be rescheduled for the next meeting on 12/20/2018.

Coordinator Johnson stated the agenda for the hearing scheduled 12/20/2018 had been posted and the soonest agenda item #13 could be rescheduled would be 01/10/2019.

Mr. Whitney clarified that agenda item #13 was not a grievance but was set as a discussion item to determine if it should go to hearing.

Chair Puglisi agenda item #13 was similar to the first hearing of the morning (#4638 Dawe MTD).

Chair Puglisi stated if the Committee members were having an issue with time constraints, the Committee could 'trim down', as long as there were 4 members left to form a quorum.

Chair Puglisi stated as far as the agency being present, since there is no testimony provided for an agendized item, it didn't seem to qualify as a hardship.

Chair Puglisi stated the agency would not have an opportunity to speak except during public comment.

Chair Puglisi stated the agency request to postpone discussion on agenda item #13 would be taken under advisement.

8. Discussion and possible action related to Grievance #5653 of Mr. Youssef Alhwayek, Department of Transportation – Action Item

Chair Puglisi stated there was a resolution conference held for grievance #5653, which was similar to grievance #4638.

Chair Puglisi stated the geographical area was different between the two grievances.

Member Bauer moved to answer grievance #5653 without a hearing based on previous decisions by the EMC.

Chair Puglisi stated the Committee could include the decision cited during the hearing of grievance #4638 hearing, decision #03-16.

Member Bauer restated her motion citing decision #03-16.

Member Novotny seconded the motion.

Chair Puglisi asked if there was any Committee discussion.

Member Russell stated the Committee should move the grievance forward because there is an evaluation and occupational study in the grievance and sometimes the employee's work on the same crew.

Chair Puglisi stated occupational studies need to be appealed to the Personnel Commission.

Member Laney stated the grievant and the employee discussed in the grievance are both at the same grade and step, so there would be no resolution the Committee could offer as it is outside of the Committee's scope.

Chair Puglisi stated the Committee has not been able to offer back pay for the merit increases.

Member Laney stated that due to the grievant and employee discussed being at the same grade and step, she did not see an inequity as NAC 284.204 allows the agency to make pay adjustments if there is an inequity, but in this case, the employees are equal.

Chair Puglisi stated often when employee's talk about inequity, they are talking about job responsibilities and supervision.

Member Laney stated the only difference she noted between this grievance and grievance #4638, was the grievant had 20 years of service but the statute is clear the Committee cannot determine length of service.

Chair Puglisi asked if there was any more Committee discussion and

reiterated Member Bauer's motion to answer grievance #5653 without a hearing based on previous EMC decision #03-16.

The Committee voted, and the vote was 5 to 1 in favor of the motion, with Member Thompson voting 'nay'.

MOTION: Moved to answer grievance #5653 without a hearing based on previous EMC decision #03-16.

BY: Member Bauer

SECOND: Member Novotny

VOTE: The vote was 5 to 1 in favor of the motion with Member Thompson voting 'nay'.

9. Adoption of the EMC Rules of Practice – Action Item

Chair Puglisi requested a motion to adopt the EMC Rules of Practice.

MOTION: Moved to approve the EMC Rules of Practice.

BY: Member Bauer

SECOND: Member Thompson

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

10. Approval of Minutes for September 27, 2018, October 8, 2018, EMC Chair Election and October 18, 2018 – Action Item

Chair Puglisi stated unless there was an objection, he would entertain a motion to approve the minutes as a package.

There was no objection from the Committee.

MOTION: Moved to approve the minutes for September 27, 2018, October 8, 2018 and October 18, 2018 as a package.

BY: Member Bauer

SECOND: Member Russell

VOTE: The vote was 5 to 1 with Member Novotny abstaining.

11. Public Comment

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

12. Adjournment

Chair Puglisi adjourned the meeting at approximately 5:29 pm.