



**STATE OF NEVADA**  
**EMPLOYEE-MANAGEMENT COMMITTEE**  
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**Meeting Minutes of the Employee-Management Committee**  
**January 30, 2020**

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	
Ms. Pauline Beigel	X
Mr. Ron Schreckengost	
Ms. Jennelle Keith	X
Ms. Tonya Laney	

**Employee Representatives**

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

**Staff Present:**

Ms. Tori Sundheim, EMC Counsel, Deputy Attorney General  
Ms. Breece Flores, 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 adopt the agenda.

**BY:** Member Whitten

**SECOND:** Member Thompson

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

**5. Discussion and possible action related to Grievance of Lionesha Frazer #6505, Department of Corrections – Action Item**

Officer Frazer was present in proper person. The agency-employer, the Nevada Department of Corrections (“NDOC”), was represented by Renee Fletcher from NDOC Human Resources (“Ms. Fletcher”). Grievant and Associate Warden Jeremy Bean (“AW Bean”), were sworn in and testified at the hearing. There were no objections to the exhibits submitted by the parties.

**STATEMENT OF THE CASE**

As an initial matter, Chair Puglisi stated that he felt that the EMC did not need to go through the hearing process with respect to Officer Frazer’s grievance based on the EMC’s decision in Grievance # 47-19, *In Re Grievance of James Buckley*, which involved NDOC, and which was heard by the EMC in November of 2019.

Chair Puglisi stated that the *Ludwig* case (*NDOC v. Ludwig*, 440 P. 3d 43 (2019)) had been cited in Grievance # 47-19, and that the Court in *Ludwig* had stated that any written reprimand issued to a grievant prior to the adoption by the State of Nevada Personnel Commission of NDOC penalties and prohibitions was deemed invalid, with the caveat that a written reprimand may reference the NAC.

Chair Puglisi also noted that the written reprimand in Officer Frazer’s grievance did not reference the NAC, and so the EMC could go through

the entire hearing, go into deliberation, and then uphold the grievance based on the EMC's previous decision in Grievance # 47-19. Each party was allowed a brief period of time to present their arguments as to whether they disagreed or not with Chair Puglisi's statements.

Grievant stated she was a correctional officer with NDOC who worked at High Desert State Prison ("HDSP") located at Indian Springs, NV.

On June 3, 2019, Grievant was served with an initial written reprimand, and was then served with an amended written reprimand on July 29, 2019.

Grievant stated in substance that prior to receiving the initial written reprimand she had never heard of the allegations against her referenced in the written reprimands.

Grievant noted in substance that she had provided several pieces of evidence in her packet that indicated she was still performing her job up to standard.

Grievant also testified that she had never received any kind of job coaching and had performed her job satisfactorily prior to being issued the written reprimands, and that NDOC's allegations against her in the written reprimands were false.

A.W. Bean noted in substance that the original written reprimand had been issued by NDOC prior to NDOC learning that Administrative Regulation ("AR") 339 had been invalidated, and that there was also a spelling error in the original written reprimand, so the reprimand was reissued with the spelling error corrected and the appropriate NAC added.

From statements made by the parties the determination was made to proceed to hearing as Grievant had received the initial written reprimand on June 3, 2019, and then had received an amended written reprimand with the appropriate NAC added to the written reprimand, which was then provided to Grievant.

Grievant added to her previous statement that she felt NDOC was being prejudiced and biased towards her, and that she had pleaded her case several times to NDOC, and that NDOC had been unwilling to work with her.

Grievant noted that she was pregnant during part of this time period, and that the situation had put her through stress that caused her pregnancy unnecessary risk. Grievant stated in substance that when she was in such a condition, she would never have caused such havoc towards another person as described in the written reprimand.

Grievant testified in substance that she loved what she did and hoped that others did not experience the treatment she had received, as she felt that the unfairness exhibited by NDOC supervisors was out of control, and that they were not being held accountable by NDOC for their actions.

Grievant also argued in substance that a staff member was able to furnish to NDOC several reports against her without her knowledge, which seemed unfair, and which was done out of spite due to Grievant not wanting to communicate personally with the staff member, Brian Solomon, a case worker with NDOC (hereinafter Mr. Solomon will be referred to as “case worker”) who made the allegations due to the case worker cursing Grievant out while at work

Grievant stated that she did ignore the case worker on one occasion when he tried to have a personal conversation with her in May 2019, but Grievant further stated she performed her job well on all other occasions.

Grievant further noted that she had been told by A.W. Bean that her name had come across his desk several times.

Grievant noted that there were over 400 officers at the HDSP yard, and they were not all going to like her, but also stated that she was one of the most respectful and professional officers on the HDSP yard. Grievant also argued that NDOC had not performed a proper investigation, and drew conclusions towards employees whom NDOC favored, and that she had only seen African American women treated by NDOC with such a degree of unprofessionalism and unfairness, and that unfairness and bullying had caused some women officers to quit.

Grievant also stated in substance that it was ok to not like her or someone else, but to falsely accuse a person and then mess with their work performance and defame the person’s character was improper.

Grievant argued in substance that the written reprimand was strategically put together to destroy her character, but that NDOC was unsuccessful in doing so. Grievant also stated that HDSP Warden Brian Williams (“Warden Williams”) was aware that Lt. Julie Matousek (“Lt. Matousek”) was a micromanager who liked to resolve matters immediately.

Grievant further argued that she documented the times she could have been informed of the allegations against her in the case worker’s complaints and asked why she was not informed of the allegations, and questioned why her chain of command was not used to inform her of the allegations against her.

Grievant further stated that she had been bullied and harassed ever since she transferred from the prison in Ely, NV, and when she reported the bullying and harassment to supervisors she was told that those grievances would not go anywhere, but that she could continue to file the

grievances, and that since the person harassing her was a supervisor she would not win the grievance.

Ms. Fletcher argued in substance that NDOC had resolved Officer Frazer's grievance, as it appeared to her that the resolution being sought by Grievant was to have the (amended) written reprimand removed from her file, and that this was subsequently done, since NDOC had removed the amended written reprimand from Officer Frazer's file and had replaced it with a letter of instruction ("LOI"), which was for coaching purposes and would not go into her personnel file.

Ms. Fletcher also noted that she was aware, based on these actions, that Ms. Christina Leathers was going to ask for Officer Frazer's grievance to be dismissed.

A.W. Bean noted, however, that this proposed resolution was rejected by Grievant, and so the July 2019 written reprimand issued to Grievant had not actually been removed from Grievant's file.

A.W. Bean further stated in substance that Grievant was not immediately notified of the written reprimand due to the fact that there had been a change in the Peace Officer's Bill of Rights (NRS 289.020-NRS 289.120) regarding the investigatory process.

According to A.W. Bean, if an allegation was made against a peace officer that might result in disciplinary action as defined by NRS then NDOC was not allowed to question the peace officer related to the allegations against the officer until the officer was provided with 48 hours-notice in order to allow the officer the opportunity to secure representation, and so this delayed the written reprimand being issued to Grievant.

A.W. Bean stated in substance that NDOC eventually did speak with Grievant about her reprimand, but that NDOC first had to send the allegations against Grievant to its Inspector General's ("IG") Office to determine if the allegations were severe enough to result in any disciplinary actions that could implicate the Peace Officer's Bill of Rights, so that NDOC did not violate the Peace Officer's Bill of Rights.

According to A.W. Bean, when the matter was returned it was determined that the facts and circumstances involved a discourtesy situation, which did not progress, so that NDOC was able to discuss the written reprimand with Grievant.

Grievant testified that the allegations against her were false, and that NDOC basically stated she failed to perform her job, and that apparently NDOC did not have the time to inform her about the allegations against her prior to issuing the written reprimand, and was trying to understand what A.W. Bean said with respect to legal matters, because when Grievant received the initial written reprimand she walked into A.W.

Bean's office, with a witness, and there were two wardens in the office, A.W. Pickett, along with Lt. Matousek, and the written reprimand "was sitting right there."

Grievant stated in substance that what A.W. Bean had stated was incorrect, as he already had his mind made up about matters that were never brought to Grievant's attention, and that it should always be the right of an officer to know what allegations had been made against her. Otherwise, Grievant continued, anyone could make a report against an officer and give it to a higher up and then the officer's job was on the line. Grievant further noted in substance that the practice she had noticed since coming to HDSP was that if an IR (incident report) had an officer's name in it and accusations, that IR number was supposed to be provided to the officer being accused, and the accused officer was allowed to provide his or her side of the matter, but that was not done in her situation.

Grievant also testified in substance that prior to her mediation with NDOC, Warden Williams had stated that he wanted to know why Grievant was not informed of the allegations against her in the written reprimand, and he stated that he did not understand why Grievant was not informed of the allegations against her, or about the written reports concerning Grievant's work ethic, and that Warden Williams had stated that was why no conclusion was drawn previously and the written reprimand still stood.

According to Grievant, Warden Williams performed his investigation, and went to Lt. Matousek and Lt. Matousek stated that she had not had the time to speak to Grievant prior to issuing the initial written reprimand.

Grievant stated that she had printed out a calendar and provided it as evidence which showed the days she had worked and the times she could have been informed of the allegations against her made by the case worker. Grievant further stated that she believed that the first report was written on May 22, 2019, and that she had worked May 26, 27, 28 and 29, in addition to June 2, 2019.

Grievant stated that on June 3, 2019, she was served the initial written reprimand, so that NDOC had the time to speak with her prior to issuing the reprimand.

Grievant also testified that she searched the NDOC system with respect to when supervisors had entered her unit when the accusations were presented about her, so that she had evidence showing when her supervisors had time to inform her of the complaints made against her. Grievant stated that her supervisors could have taken her aside and informed her of the allegations, and that Grievant could not correct something if she was unaware that something was wrong.

Grievant noted that she remembered information in the grievance about the case worker being in fear of his life, but that she should not be held responsible for the case worker's first couple of months of work, and that she would never have put the case worker's life in jeopardy.

Grievant further noted that there had been a relationship between the case worker and herself outside of work for about a month, and that the case worker cursed her out at work, and that he was upset about something, and that afterwards she came to the case worker in a professional manner.

Grievant asserted that she explained this to A.W. Bean when Grievant was initially served with the written reprimand, and that A.W. Bean responded and said that the two employees were not going to be cursing each other out.

Grievant added that she would never curse another officer out in such a manner. Grievant stated that she took the case worker aside and explained that what he did was wrong, and that the case worker apologized in front of other staff members.

Grievant testified that on that same day the case worker came to her to try and have a personal conversation with her and she looked at him and let him know there was no way that she was communicating with him anymore because the case worker had cursed her out, and that was the only time Grievant had ignored the case worker.

Grievant added that she could have been informed about the allegations against her on June 2, 2019, when there were about 6 or 7 supervisors in Grievant's unit. Grievant believed that the supervisors were generating her reprimand at that time, otherwise why would so many supervisors be in the area, but apparently with no time to inform her of the allegations against her.

Grievant also noted that she went onto NDOC's reporting system to look for all major and minor incidents and could not find any incidents that would have prevented any supervisor from letting her know of the allegations that had been made against her.

Grievant noted in substance that the written reprimand said she ignored phone calls. Grievant stated in substance that she did not ignore telephone calls, as there is no way that she could ignore the case worker's calls because the telephone she used has no caller ID, and that NDOC produced no evidence to support its conclusion that the case worker was ever locked in on a tier for several minutes.

Rather, it was NDOC simply taking the case worker's word and saying that was "golden," and then claiming that there was a legal reason why NDOC did not inform her. Grievant also noted that there was no documentation further into her work history stating that she did not know how to perform her job or was not performing her job, and that if she

was failing to perform her job why did she continue working in the same unit with the case worker, if the case worker was in jeopardy?

Grievant also questioned when she was pulled from her unit why she was sent to another control post to allegedly put others in jeopardy if she was truly a bad officer.

Grievant also clarified that May 13, 2019 was the day the case worker cussed her out, and that she learned later that on May 22, 2019, the case worker had made a complaint.

Co-Vice-Chair Beigel stated that she thought the Peace Officer's Bill of Rights was slightly different than regular State of Nevada employee rights, and that whoever had presented the case for NDOC had mentioned the applicable NRS for the Peace Officer's Bill of Rights.

A.W. Bean stated that he was unaware of the particular NRS that applied to the Peace Officer's Bill of Rights, and that he would need to research to answer the question. A.W. Bean further stated that anything NDOC would have to serve notice for would fall under that category, and that level three or below, such as a written reprimand, could be adjudicated without an investigation.

In response to questioning A.W. Bean noted that there was a difference between peace officer and non-peace officer rights when it came to an investigation. A.W. Bean stated that all of the officers were entitled to 48 hours-notice in order to secure representation, but there were certain rights that only applied to peace officers.

Member Keith stated that the NRS dealing with the Peace Officer's Bill of Rights was in NRS Chapter 289.

A.W. Bean stated in substance that it was his understanding that the first complaint NDOC received about Grievant was on May 27, 2019, when an email was sent to Lt. Matousek outlining the alleged interaction between Grievant and the case worker.

A.W. Bean noted that Lt. Matousek was the primary point of contact for the complaints, and she was not at work from May 28-June 2, 2020, and so the other three reports filed by the case worker were not received by Lt. Matousek until she returned to work.

A.W. Bean testified that after the Lieutenant returned the remaining complaints were sent off to the IG's Office for review. The IG's Office responded back and said that the allegations in the first complaint did not rise to a level that would have required a higher level of discipline, and so the Peace Officer's Bill of Rights was not implicated, but then NDOC notified its IG's Office that there were three other reports it needed to consider.



A.W. Bean stated that at that same time NDOC reviewed other paperwork then in Grievant's file and determined that there had been two other instances that involved a discourteous interaction between Grievant and other NDOC employees.

A.W. Bean stated that NDOC then drafted a written reprimand, after which Grievant was informed of the written reprimand and asked at that time what had happened, at which time Grievant had stated in substance that the case worker had cursed her out, but that a report on that incident had never been filed.

A.W. Bean testified in substance that when Grievant was asked why she had not filed a report when the case worker had cursed at her Grievant stated that she felt like the incident was a personal one that had initially occurred outside of the workplace and had spilled over into work, so that she felt it was unnecessary to report the incident.

A.W. Bean stated that Grievant was then told she was to report any interaction at work that was unprofessional or negative, whether the incident originated outside of work or not.

In the interim, after learning of this interaction, A.W. Bean stated that NDOC went back and checked some of its cameras in its housing units and viewed Grievant interacting with the case worker, and there were times when the case worker had not been given access to or from pods or housing units at HDSP.

According to A.W. Bean, when Grievant was asked about these recordings Grievant stated that she did not want to talk to the case worker because she knew that the encounter with him was going to be of a personal nature. A.W. Bean in substance asked Grievant how she knew this when she was not communicating with the case worker, to which Grievant responded she just knew the communication would be of a personal nature.

At that time A.W. Bean stated in substance that NDOC decided to proceed with the written reprimand, as Grievant's actions appeared inappropriate, as there was never any action or communication between Grievant and the case worker to indicate that the communication was going to be a personal communication, and that such an assumption could not be made.

A.W. Bean also stated that the decision to progress to the written reprimand was also based on the current incident being the third allegation against Grievant resulting in documentation for discourteous communications with co-workers.

Deputy Attorney General Tori Sundheim ("DAG Sundheim") stated in substance that there was a Senate Bill that had been passed in the most recent legislative session, SB 242, which was effective July 1, 2019, and

that it appeared this bill changed State of Nevada employee rights when there was anything that went into an employee's file.

DAG Sundheim stated in substance that SB 242 might impact how the written reprimand in this case was amended, so that if the amendment came after July 1, 2019, there might be an impact where potentially the law was not being followed, but that was not her decision to make.

Co-Vice-Chair Beigel asked DAG Sundheim if she had read what level of discipline SB 242 affected, and if it reached to the level of a written reprimand. DAG Sundheim stated in substance that SB 242 applied to "punitive action," which was defined as any action which may lead to the dismissal, demotion, suspension, reduction of salary, written reprimand or a transfer of a peace officer for purposes of punishment.

Grievant again stated that she worked on May 28, 29 and June 2, 2019, at HDSP, and had NOTIS entries to demonstrate this fact.

Grievant also stated that when she was given the chance to provide her side of events in this matter the written reprimand had already been drafted and was sitting in front of A.W. Bean. Grievant also stated that Senior Officer Findlay (Spelling?), her witness when she received the written reprimand, had previously advised her not to report the incident where the case worker had cursed her out, as he thought that nothing else would come of the incident.

Grievant stated in substance that she was aware now that she was required to report all incidents. Grievant further stated in substance that taking the Senior Officer's advice not to report the incident was in retrospect a mistake, and that she had wanted to report the incident in the first place.

Grievant also noted that a response to her grievance from Associate Warden Scally indicated that she had admitted to the allegations against her, but that this was untrue, as evidence by her refusal to sign the initial written reprimand.

Grievant further stated in substance that the NDOC camera system was down during the relevant period of time, so that there could have been a time that the case worker had been at a unit door and she would not have seen the case worker.

Grievant added that if there were recordings as described by A.W. Bean she would like to see them presented. Additionally, Grievant noted in substance that, with limited exception, it was NDOC policy to only have one sally port door open at a time, and so if someone else wanted to move in the facility and thus need doors open for them that person or persons might take priority over the case worker, who would then have to wait for the door he was at to be opened.

A.W. Bean noted that the cameras in question had been changed, as the project for doing so had begun on June 1, 2019, to be in compliance with the July 1, 2019 legislative mandate.

A.W. Bean testified in substance that the old cameras were in place when the incidents involving Grievant had occurred, and he could look and see if the footage was still available.

Chair Puglisi asked Grievant about a long thread of text messages Grievant had submitted with her packet, and Grievant responded that this string was provided in order to show that the interaction with the case worker was personal, and that they had had a relationship outside of work, so that for she and the case worker to communicate a week prior to the case worker's complaint, and then the next week for the case worker to have brought four reports against her showed a correlation with the relationship outside of work and the fact that the case worker had made false reports about her.

Grievant added that she had been made out to be this horrible person in the written reprimand, but in the text messages the case worker was sending emojis with kisses and hearts saying Grievant was angelic, but then the next week she was the devil. Thus, Grievant stated, something was being left out.

Co-Vice-Chair Beigel stated that she was reading the grievance and that Grievant's proposed resolution was to be left up to management in negotiations.

Co-Vice-Chair Beigel further stated that it was her understanding that some kind of conference had occurred, but that Grievant was not satisfied with the resolution conference.

Co-Vice-Chair Beigel in substance asked Grievant what she wanted as a remedy from the EMC at this time.

Grievant responded that she had never been through a grievance before, so she put down a response that was in defense of herself. Grievant reiterated that she felt that the written reprimand should not be in her file, as none of the incidents alleged took place.

Grievant stated that the matter should have been wiped clean, as it should have been handled differently by the supervisors.

Member Thompson stated that she was still unclear as to what Grievant wanted to happen today, to which Grievant in substance stated she wanted the written reprimand removed from her file.

Chair Puglisi stated that there had been a resolution conference where NDOC had offered to replace the written reprimand with an LOI, which was not a disciplinary action that would have went into Grievant's file at

the State of Nevada, Department of Administration Human Resources Management Central Records, which was declined.

Grievant initially stated that she did not recall NDOC offering this as a resolution, but clarified that she would have had to have declined to agree to something that was not true, which would have been what she would have been doing in going from a written reprimand to an LOI.

Member Whitten stated that if she understood Grievant correctly, what Grievant preferred the outcome to be was for the written reprimand to be removed from her personnel file, and that she was also declining an LOI. Grievant responded yes to Member Whitten's statement.

Grievant closed in substance by stating she had nothing to add and hoped that the EMC would reach the right conclusions based on what she had presented to the EMC.

NDOC closed by noting in substance that Grievant stated that none of the allegations against her had ever happened. However, NDOC argued that there was an incident between Grievant and the case worker where he allegedly cussed out Grievant, which Grievant failed to report, and there were several encounters the case worker alleged had occurred that he had reported.

When NDOC discussed the allegations with Grievant only then did any of Grievant's complaints come forward about the case worker, which was confusing to NDOC as to why none of Grievant's complaints were reported prior to then.

NDOC also stated in substance that the incident involving the case worker was not Grievant's first instance of conflict with other NDOC employees, the current written reprimand being the third allegation all involving different employees, and in fact Grievant had been placed at her current post in order to create separation between Grievant and other NDOC employees who had less than favorable interaction with Grievant.

NDOC closed by stating in substance that the written reprimand was accurate and sufficient and should remain in Grievant's file.

Grievant questioned the situations referenced by A.W. Bean and stated in substance that no one informed her of the alleged problems with other NDOC employees which led to her removal from previous posts.

NDOC responded that Grievant had, while working in the Visiting Unit, filed grievances against other employees stating that they were not communicating with her or assisting her in her work functions.

NDOC stated that at that time they spoke with other employees to try and understand better what was going on, and the other employees had made significant allegations against Grievant. At that time the report

was forwarded to the IG office, and A. W. Bean responded to Officer Frazer's grievance by stating that he would be forwarding the report to the IG Office because there were allegations in the report that could have "resulted in something serious." This report came back from the IG's Office as a discourteous situation that should be resolved with the employee.

A.W. Bean stated that at that time an LOI or a performance card was generated and placed in Grievant's file. A.W. Bean added that following this situation Grievant was removed from her post.

A.W. Bean stated in substance that after Grievant was removed from the Visiting Unit and placed at a new work area an employee who relieved Grievant after her shift ended reported that there was graffiti all over the wall in Grievant's control post.

According to A.W. Bean, once again an IR number was generated and a report was filed to have all of the staff members who served in that control post during the appropriate period of time write a report saying whether the graffiti/writing was there at the time they were on post.

The officer Grievant relieved indicated that the graffiti was not present when she was on duty but was present when she relieved Grievant. A second employee also stated that there was no graffiti on the unit control walls when he initially went there to retrieve some items from the control post, and then when he went back up at the end of his shift the graffiti was present.

A.W. Bean stated in substance that NDOC had reached out to Officer Frazer and they had several emails indicating to her she needed to file a report concerning the graffiti, and that for the first two weeks Grievant refused to file a report on the matter, and had even had an argument with supervisory staff.

Finally, according to A.W. Bean, Grievant wrote a one sentence report that said Grievant did not know anything about the graffiti on the wall. At that point, according to A.W. Bean, Grievant either received an LOI or a letter of reprimand for insubordination for not filing a report when she was requested to do so and for the graffiti on the unit walls.

A.W. Bean added that with respect to the allegations against Grievant in the Visiting Unit, there were just nuisance things being done, where Grievant engaged in mild forms of harassment.

Chair Puglisi noted in substance that if allegations were not in the written reprimand issued to Grievant in July 2019 then the EMC was not going to consider the allegations, and that the EMC was focused on the current reprimand.

Member Thompson asked in substance what exactly was an LOI?

A.W. Bean responded in substance that an LOI was generally considered a coaching event or tool to notify an employee of a deficient behavior or function and to provide the employee guidance to prevent or correct the particular issue, and with respect to NDOC was generally accompanied by an on the job training form.

In response to questioning by Member Thompson, A.W. Bean stated in substance that an LOI issued by NDOC would still reference an event if an event had occurred.

A.W. Bean also added that LOI's were often associated with minor policy violations. It was also noted by NDOC that LOI's were non-punitive.

The EMC deliberated on Officer Frazer's grievance.

Co-Vice-Chair Beigel stated in substance that one of her biggest concerns was that the first written reprimand was issued on June 3, 2019, and the amended written reprimand was issued on July 29, 2019, which was after the July 1, 2019 effective date.

Co-Vice-Chair Beigel added that in reading page one of fifteen, of the State of Nevada NDOC Prohibitions and Penalties, that was approved by the Personnel Commission on June 21, 2019, it referenced that if the suspension, demotion or dismissal, Code 3, 4 and 5 was recommended for a permanent classified employee, then the pre-disciplinary guidelines set forth in NAC 284.656 must be followed, which was why she asked DAG Sundheim if a letter of reprimand was included in the discipline in SB 242.

Member Novotny stated that she agreed with Co-Vice-Chair Beigel and added in substance that she had a hard time in determining how much the EMC should be deliberating if the new legislation made everything moot.

Member Keith stated in substance that she saw the information in the description of acts and omissions for the written reprimand, and asked if there was any type of mediation, and then asked why Grievant was not spoken with, and why was an LOI not issued ahead of a written reprimand in this case?

A.W. Bean responded, when asked about attempts at mediation, that the only attempt at mediation was just the conversation that NDOC had with Grievant in his office just before the written reprimand was issued to Grievant.

Chair Puglisi added that there had been a resolution conference in July 2019 between the parties.

Member Keith asked whether in the resolution conference if all the parties had been involved, or whether it involved the associate wardens and Grievant only?

A.W. Bean stated that the associate wardens, Lt. Matousek and Grievant were all involved in the resolution conference, and that there was a separate conversation with the complainant.

Member Whitten stated that she had a couple of concerns regarding the written reprimand being issued to Grievant without first speaking with her and discussing the issues, because in order to perform a complete investigation at some point NDOC would have to speak with the person prior to writing the person up.

Member Whitten stated that her second concern was that housekeeping is something like misspelling a name where one can go back and correct the error, but to go back and add additional information because one found out how the written reprimand was initially written was incorrect seemed inappropriate.

Member Thompson added in substance that she agreed with most of the comments made because the allegations were not discussed with Grievant prior to the written reprimand being issued to Grievant, and then a second written reprimand was issued, and Grievant was not provided the 48-hour notice.

Member Keith stated that on the first written reprimand it was written that Grievant refused to sign, and on the second written reprimand there was no note of this, so Member Keith wanted to know if Grievant was actually handed the second reprimand and refused to sign that document too?

Grievant responded that she was given the second written reprimand in passing from Lt. Matousek, who just handed the document to Grievant stating she knew Grievant did not want to sign it and just handed the document to her. Grievant also clarified for Member Thompson that NDOC did not sit down with her to discuss the second written reprimand when it was issued to her.

Chair Puglisi asked NDOC if it had a signed copy of the second written reprimand signed by Grievant, and A.W. Bean stated they had a signed copy in Grievant's file. A.W. Bean also stated in substance he was unsure of why the written reprimand was submitted to the EMC without being signed.

Chair Puglisi stated in substance that there were many things that just did not make him feel comfortable about the facts surrounding the grievance.

Chair Puglisi stated in substance that original written reprimand had been changed, and that it did not originally state anything from the NAC, it only identified the penalties and prohibitions, which were noted as invalid by the Nevada Supreme Court in *Ludwig*.

Chair Puglisi noted in substance that in light of the fact that Grievant was not the cause of this he thought that the EMC could hear all of the evidence and reach a conclusion at the end of the presentations, and that NDOC could not just keep tacking on to the first written reprimand.

Chair Puglisi stated that while he felt there might be some merit to the reprimand, he did not feel the reprimand was “clean enough” to uphold. Member Whitten asked if the EMC was at the point where it was ready for motions, as she was prepared to make one.

Member Novotny wanted to clarify that when Grievant finished her post at Visiting, that no one from NDOC said anything to her about any alleged problems she had in Visiting.

A.W. Bean responded that this was incorrect, but that NDOC had not submitted for Officer Frazer’s current grievance hearing any paperwork concerning any incidents involving Grievant while she was at the Visiting Unit, and that he believed that NDOC had issued Officer Frazer an LOI as a result of conduct she engaged in while at the Visiting Unit.

Member Whitten motioned to grant Officer Frazier’s grievance # 6505 and remove the written reprimand from her file and no letter of instruction be placed in her file regarding the matter.

Member Thompson seconded the motion.

Chair Puglisi voiced his opinion that the first part of Member Whitten’s motion was fine, but that he did not feel that the EMC should direct an agency not to address this matter in a way they legally had the right to address, and he felt that such an action was outside of the EMC’s jurisdiction, and would in substance prevent NDOC from coaching the employee.

Member Whitten responded in substance that she felt that the process had been coaching for both sides, and that to issue a letter of instruction would be irrelevant, as the letter of reprimand was issued in June of last year, and that we were well on our way to June 2020.

Member Keith stated in substance that she agreed that some type of coaching for both sides should occur, whether as an LOI or a documented conversation, so that all parties could move forward and have a conducive, professional relationship, so she agreed that maybe the LOI part of the motion was beyond what the EMC could tell the agency to do.



Chair Puglisi stated that it had been EMC practice not to hear grievances on LOI's and that the EMC did not have jurisdiction to have an LOI removed, so he thought the EMC lacked jurisdiction to say that an LOI could not go in an employee's file.

Chair Puglisi motioned for an amendment that the final part of Member Whitten's motion be stricken, so that the motion read to grant Grievance # 6505 and remove the written reprimand from Officer Frazier's file.

Chair Puglisi's amendment was seconded by Member Keith. The amendment passed by a vote of 4-2. The amended motion passed unanimously to grant Grievance # 6505 and remove the written reprimand from Grievant's file.

### **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.
2. Grievant worked as a correctional officer at HDSP during the relevant time period.
3. Grievant had a personal relationship outside of work with case worker for a short time during early 2019.
4. The case worker filed four complaints against Grievant in May 2019.
5. NDOC served a written reprimand on Grievant on June 3, 2019.
6. The written reprimand contained allegations against Grievant made by the case worker.
7. The allegations in the written reprimand included that Grievant not opening doors at HDSP for the case worker while the case worker was carrying out his duties, that Grievant left the case worker stuck in various units at HDSP, and that Grievant was not answering work-related emails from the case worker, nor was Grievant speaking with the case worker.
8. Grievant was served an amended written reprimand on July 29, 2019.
9. On May 13, 2019, the case worker behaved unprofessionally towards Grievant while at work in that he cursed at her. The case worker later apologized to Grievant for this behavior.
10. After the case worker apologized to Grievant, he tried to have a personal conversation with her, and she did not speak to him. This incident was the only time Grievant knowingly refused to speak with the case worker.
11. Grievant did not intentionally leave the case worker stuck in various units as the result of her refusing to open doors for the case worker.
12. NDOC had a policy concerning how many doors could be open at one time, so Grievant had to prioritize who she opened doors for, so that it was possible that Grievant was unable to quickly open a door for the case worker.
13. There was conflicting testimony about whether cameras in Grievant's units were working, as A.W. Bean stated in substance that he had seen Grievant delay opening a door for the case worker, while Grievant testified that the cameras in her unit were not working at the relevant time period. However, no camera film was produced as evidence at the grievance hearing.

14. Grievant did not report the case worker cursing her out.
15. Grievant asked her senior officer for advice on whether or not to report the case worker and the senior had advised her not to report the case worker cursing at Grievant.
16. Grievant was on duty on May 26-29, 2019, and also June 2, 2019.
17. NDOC never spoke with Grievant about the allegations prior to drafting the first written reprimand.
18. NDOC, upon receiving the case worker's complaint against Grievant on May 27, 2019, sent the complaint to its IG Office for review.
19. Soon after the case worker filed three other complaints against Grievant with NDOC. These complaints were also sent up to the NDOC IG's Office, but not immediately because Lt. Matousek, the point of contact for the complaints, was out of her office from May 28, 2019 until June 2, 2019.
20. On June 3, 2019, NDOC called Grievant into A.W. Bean's Office, where A.W. Bean questioned Grievant about the allegations against her made by the case worker, and then served Grievant with the initial written reprimand.
21. NDOC issued to Grievant a second written reprimand on July 29, 2019. According to NDOC, the difference between the first written reprimand and the second written reprimand was that NDOC corrected a typographical error in the first written reprimand and added an appropriate NAC, as by that time NDOC had learned that AR 339 had been invalidated.
22. Grievant was given the second written reprimand in passing by Lt. Matousek on July 29, 2019.

### **CONCLUSIONS OF LAW**

1. For this grievance, it was Grievant's burden to establish by a preponderance of the evidence that NDOC abused its discretion or failed to follow appropriate law when it issued Grievant the amended written reprimand on July 29, 2019.
2. 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).
3. Officer Frazer's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
4. SB 242 (2019), which amended NRS Chapter 289, passed the Nevada Legislature on May 24, 2019.
5. SB 242 (2019) became effective on July 1, 2019.
6. SB 242 (2019) applies to NDOC, as it is a law enforcement agency under SB 242.
7. SB 242 defines "punitive action" as "any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer of a peace officer for purposes of punishment."
8. SB 242 (2019) applied to Officer Frazer's grievance, as she had been issued an
9. As SB 242 (2019) was applicable, pursuant to NDOC's Exhibit C, titled Prohibitions and Penalties, the pre-disciplinary guidelines set forth in NAC 284.656 were required to have been followed. This was not done, as Officer Frazer was provided no notice of substance of the allegations against her prior to either of the written reprimands being issued to her.
10. Additionally, the amended written reprimand issued on July 29, 2019, was inappropriately issued as it was not truly an amended written reprimand because NDOC's main reason for amending the initial written reprimand was to include the appropriate NAC's that should have been included in the initial written reprimand

(which only included prohibitions and penalties that had been declared invalid by the Court in *Ludwig*) issued to Office Frazer on June 3, 2019.

### **DECISION**

Based upon the evidence in the record, and the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor, Grievance # 6505 is hereby GRANTED; the written reprimand issued to Grievant will be removed from her file.

**MOTION:** Moved to grant grievance #6505 and remove the written reprimand from the employee's file.

**BY:** Member Whitten

**SECOND:** Member Keith

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

**6. Discussion and possible action related to Grievance of Marc Sydioncgco #6574, Department of Corrections – Action Item**

Grievant was represented by Stephanie Canter and Jon West. Ken Billygold, Tracy Hill, Renee Fletcher, Gary Piccinini and William Sorem represented the agency-employer, Nevada Department of Corrections (“NDOC”).

### **STATEMENT OF THE CASE**

Mr. Sydiongco contends that NDOC was required, but failed, pursuant to NDOC Administrative Regulation §300.3 (“NDOC AR §300.3”), to contact or schedule him for an interview. *See* Employee Exh. 4; NDOC Exh. C. According to NDOC AR §300.3(1) the “[t]op five ranked candidate[s] *shall be interviewed or contacted* for interviews. There may be more than one (1) candidate per rank.” (*emphasis added*).

Mr. Sydiongco was number four on the ranked list dated July 3, 2019, for the position of Correctional Lieutenant, Class 13.310, with the Department of Corrections. *See* Employee Exh. 2 (List ID No. 145280). Mr. Sydiongco was also number four on the ranked list dated October 17, 2019, for the position of Correctional Lieutenant, Class 13.310, with the Department of Corrections. *See* Employee Exh. 7 (List ID No. 147553). However, he was not contacted or scheduled for an interview for either position, in violation of NDOC AR §300.3(1).

NDOC responds that that there is no guarantee that an employee will be automatically contacted for an interview simply because their name is ranked a certain number on a list. NDOC contends that it has acted pursuant to statute, regulation and department policy for three main reasons.

First, NDOC argues that it has acted pursuant to statute and regulation. NDOC's position is that it complied with NAC 284.361(6), which

requires that “the appointing authority shall attempt to communicate . . . with *at least 5 persons in the first 10 ranks* to determine their availability and qualifications.” NDOC did communicate with at least 5 persons in the first 10 ranks in accordance with NAC 284.361(6). NDOC also admits that it did not contact Mr. Sydiongco.<sup>1</sup>

Second, NDOC argues that NDOC AR §300.3(1) conflicts with NAC 284.361(6). NDOC states that NAC 284.361(6) is a superseding applicable provision that clearly articulates that the hiring agency may contact any ranks within the top 10 rankings. NDOC is also required to interview veterans. That clarity does not obligate, fix, or compel the agency to interview specific rankings.

Further, NDOC’s Administrative Regulations (“ARs”) are always under review and are a reference point. Sometimes they do get updated as other rules and regulations are changed. The AR may not have been updated and could have been up for review at that time.

Mr. Sydiongco responds that NDOC did not follow NDOC AR §300.3(1). NDOC AR §300.3(1) and NAC 284.361(6) are not mutually exclusive. Mr. Sydiongco agrees that NDOC complied with NAC 284.361(6). However, NDOC must comply with its own AR, NDOC AR §300.3(1), in addition to NAC 284.361(6). *See* Employee Exh. 4; NDOC Exh. C. The NDOC AR §300.3(1) requirement to interview the first five ranks is consistent with the requirement within NAC 284.361(6) that “at least 5 persons in the first 10 ranks” must be contacted. NDOC AR §300.3(1) does place restrictions on NDOC’s recruiting, but those restrictions are self-imposed and do not violate NAC 284.361(6). Interviewing the top 5 ranked does not preclude NDOC from contacting or interviewing beyond those 5 ranked employees. NDOC AR §300.3(1) is appropriate and, while it restricts NDOC in who it must contact, it is not conflicting in any way with the NAC 284.361(6). NDOC AR §300.3(1) is well within what the NAC states.

Further, Mr. Sydiongco notes that all NDOC employees are subject to discipline for failure to comply with NDOC’s ARs in addition to Nevada Administrative Code and Nevada Revised Statutes. So too, must NDOC comply with its own Administrative Regulations and be held to the same standard. NDOC may change its AR but is bound to the current effective regulation.

Third, NDOC argues that NDOC AR §300.3(1) as cited by Mr. Sydiongco is outdated and was not effective on July 3, 2019. Rather, NDOC AR §300.3(1) is superseded by a draft of the Administrative Regulation §300.02(1) (“NDOC Draft AR §300.02(1)), which reads “[a]ny 5 persons in the first 10 ranks available shall be interviewed or

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<sup>1</sup> Mr. Sydiongco’s Exhibit 7, Page 2, reflects “Candidate Not Interested / Declined Interview or Offer.” Both parties agree that Mr. Sydiongco was not contacted. This is due to a workaround to the Nevada Employee Action and Timekeeping System (“NEATS”) which required that the first 5 ranked employees be interviewed due to an earlier version of NAC 284.361(6).

contacted for interviews. There may be more than one (1) candidate per rank.” *See* Employee Exh. 6 and Exh. D. *Compare* Employee Exh. 4 and NDOC Exh. C (NDOC AR §300.3(1)) *with* Employee Exh. 6. (NDOC Draft AR §300.02(1)). NDOC’s actions are consistent with NDOC Draft AR §300.02(1), which is what NDOC was following.

Mr. Sydiongco responds that NDOC AR §300.3(1) is still listed on NDOC’s website, is still in effect and has been since its effective date of August 30, 2017. *See* Employee Exh. 3. The NDOC Draft AR §300.3(1) to which NDOC refers has not yet been finalized or approved. *See* Employee Exh. 6 (Effective Date: 9/23/19 Draft). Therefore, the regulation that exists on the website, NDOC AR §300.3(1), should be followed by NDOC.

During witness testimony NDOC stated that Human Resources, in determining who would be interviewed, provides instructions to call at least 22% of veterans and 5 individuals from the top 10 rankings. However, those instructions do not reference any NDOC AR. It was not communicated to the employees, or line staff, that NDOC was not following NDOC AR §300.3(1).

NDOC stated that, whenever employees have questions about it then NDOC clarifies that it is only following NAC 284.361(6) and not NDOC AR §300.3(1). As long as NDOC is following the NAC, employees are aware that the ARs are being revised.

At the end of the hearing, Mr. Sydiongco and NDOC agreed to a proposed resolution, except that Mr. Sydiongco maintains the grievance should be upheld so it is understood that NDOC did not follow the process. Both parties agree that NDOC should be directed to e-mail all staff clearly articulating the hiring and interview process while the agency finalizes changes to the AR.

Mr. Sydiongco initial requested remedy was “to redo the interview selection process for Correctional Lieutenant and follow the procedure outlined in AR 300.02 and contact the candidates on the list in accordance with their rankings.” Grievance No. 6574 at 2.

However, because the positions have already been filled, seeking an interview would be fruitless. Mr. Sydiongco believes the evidence supports that NDOC violated NDOC AR §300.3(1), and that following NDOC AR §300.3(1) does not prevent NDOC from being in compliance with NAC 284.361(6).

Mr. Sydiongco’s first amended remedy requested that the EMC uphold the grievance and require that NDOC contact the top 5 individuals on any ranked list until NDOC has drafted and approved new regulations. NDOC responded that the first amended remedy is unworkable because NDOC AR §300.3(1) is under review and it would be limiting to require NDOC to follow it.

The AR is not the governing practice, even though it has not been updated in NDOC's system. Because the NAC now provides additional interviewing requirements, including 22% veterans and all disabled veterans, it would be unrealistic to interview all of the top 5 rankings in addition to those other requirements for one position. If all of the contacted employees accept an interview, there could be forty interviews just for the one position.

NDOC finally states that NDOC AR §300.3(1) was not followed and has not been followed. NDOC proposes to have the administration of the Department e-mail all staff clearly articulating the hiring and interview process while the agency finalizes changes to the AR.

Mr. Sydiongco agrees to NDOC's proposed solution with the exception that Mr. Sydiongco maintained the grievance should be upheld so it is understood that NDOC did not follow the process. Even if NDOC chooses not to finalize the AR immediately, NDOC must notify staff of what it is that they are doing so that staff is clearly aware of the process. Chair Puglisi noted that NDOC AR §300.3(1) does comply with NAC 284.361(6). NDOC AR §300.3(1) states the top 5 ranked will be contacted for an interview while NAC 284.361(6) only requires that 5 of the top 10 ranked will be contacted. He noted the case would be different if, for example, the AR required NDOC to only contact ranked numbers 11-15. However, that is not the case here. The case is that it does say that the top 5 will be contacted for interview and by doing so NDOC would not be violating the NAC which says 5 out of the top 10.

The Chair commented that the lack of communication is the reason why the parties are before the Committee. Unless the employee goes out and asks specifically about NDOC's protocol, nobody has been told whether NDOC is following NDOC Draft AR §300.02(1) rather than the effective NDOC AR §300.3(1)). He does not disagree that NDOC's resolution is reasonable and thinks the employees would understand so long as it is communicated clearly to them what NDOC is following from this day forward then the whole institution will not be angry.

The Chair then expressed concern that the revised version will put NDOC in the same position if it takes another 6 years for NDOC to revise its Administrative Regulation. NDOC should simply state it will follow NAC Chapter 284 to avoid inadvertently limiting its authority.

Sonja Whitten stated she has trouble with the agency publishing an Administrative Regulation and not following it. It is very troubling because the employees are expected to follow the NRS, NAC, and the ARs just to be told that the agency is only required to follow the NRS and NAC.

Members Sherri Thompson, Jennelle Keith, Pauline Beigel and Dana Novotny agreed that it is extremely unfair to the employees that NDOC expects them to question what's in writing without any communication

or due diligence. The AR's should be followed by everybody. It's a very difficult process to keep everything updated, but due diligence needs to occur. An employer cannot expect its employees to respect its Administrative Regulations if upper management is not going to respect them.

Pauline Beigel responded that at her agency forty-two people were interviewed for one position because of the process NDOC described. It's a monstrous undertaking and the agency tries to avoid interviewing that many people. However, she agreed with what has been stated that NDOC has not followed the AR when they should have. Even though NDOC is revising its AR, NDOC should be following the AR if it expects its employees to also follow the AR.

Chair Puglisi also expressed relief that the grievant proposed a revised resolution. Absent such a revision, somebody else's career hangs in the balance. The proposed revision requests that the Committee uphold the grievance. However, rather than request a retroactive change to the hiring process, the grievant would prefer to fix the process moving forward and to ensure NDOC communicates the expectation for the hiring process while the AR's are being revised.

Chair Puglisi encouraged NDOC in the future to avoid regurgitating NAC provisions within Administrative Regulations because it will inevitably cause an obsolete scenario. Regulations are best used for special agency needs. Manuals are a useful tool for establishing policy. The members then moved to uphold Grievance No. 6574 with the understanding the employer should notify the staff of the process for interviewing and hiring until AR 300 is revised.

### **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. Mr. Sydiongco was a non-exempt State of Nevada employee at the time he filed his Grievance.
2. Mr. Sydiongco is a Correctional Sergeant at the Southern Desert Correctional Center, a Nevada Department of Corrections facility.
3. Mr. Sydiongco was ranked number four (4) on the ranked list dated July 3, 2019, for the position of Correctional Lieutenant, Class 13.310, with the Department of Corrections.
4. Mr. Sydiongco was also ranked number four (4) on the ranked list dated October 17, 2019, for the position of Correctional Lieutenant, Class 13.310, with the Department of Corrections.
5. NDOC did not contact Mr. Sydiongco or schedule him for an interview for either position.

6. NDOC did communicate with at least 5 persons in the first 10 ranks for both positions.
7. Both positions have since been filled.
8. In filling these positions, NDOC followed the Human Resource Department's instructions to call at least 22% veterans and at least 5 individuals ranked in the top 10 on the ranked list.
9. NDOC's Human Resource Department's instructions do not refer to the NDOC AR §300.3(1) or NDOC Draft AR §300.02(1).
10. The effective date of NDOC AR §300.3(1) is August 30, 2017.
11. NDOC Draft AR §300.02(1) is not yet effective but will replace NDOC AR §300.3(1) once it is final.
12. NDOC Draft AR §300.02(1) reads "[a]ny 5 persons in the first 10 ranks available shall be interviewed or contacted for interviews. There may be more than one (1) candidate per rank."
13. NDOC did not provide clear notice to its employees as to which policies both the employees and NDOC must follow for interview protocol.
14. The Parties agreed NDOC should notify the staff of the process for interviewing and hiring until its Administrative Regulations are revised.

### **CONCLUSIONS OF LAW**

1. 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).
2. Mr. Sydiongco's grievance falls within the jurisdiction of the EMC under NRS 284.073(1)(e).
3. The Committee discussed and relied on NAC 282.255-284.257.
4. NDOC must comply with NDOC's Administrative Regulations in addition to Nevada Administrative Code and Nevada Revised Statutes.
5. NAC 284.361(6) requires that "the appointing authority shall attempt to communicate . . . with *at least 5 persons in the first 10 ranks* to determine their availability and qualifications."
6. NDOC Administrative Regulation §300.3 ("NDOC AR §300.3") requires that the "[t]op five ranked candidate[s] *shall be interviewed or contacted* for interviews. There may be more than one (1) candidate per rank."
7. NDOC AR §300.3(1) does not conflict with NAC 284.361(6). The NDOC AR §300.3(1) requirement to interview the first five ranks is consistent with the requirement within NAC 284.361(6) that "at least 5 persons in the first 10 ranks" must be interviewed.
8. NDOC AR §300.3(1) does place restrictions on NDOC's recruiting, but those restrictions are self-imposed and do not violate NAC 284.361(6).
9. NDOC AR §300.3(1) does not preclude NDOC from contacting or interviewing additional eligible employees for an interview.
10. NDOC did communicate with at least 5 persons in the first 10 ranks, in accordance with NAC 284.361(6).



11. NDOC did not contact the top five ranked candidates for interviews, in violation of NDOC AR §300.3.
12. NDOC may change its Administrative Regulations.
13. NDOC failed to comply with NDOC AR §300.3(1).

### **DECISION**

Based upon the evidence in the record, and the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefor, it is hereby ORDERED. Grievance No. 6574 is hereby **GRANTED** with the understanding the employer should notify the staff of the process for interviewing and hiring until NDOC AR 300 is revised.

**MOTION:** Moved to grant grievance #6574 with the understanding the employer should notify the staff of the process for interviewing and hiring until NDOC AR 300 is revised.  
**BY:** Co-Vice-Chair Beigel  
**SECOND:** Member Whitten  
**VOTE:** The vote was unanimous in favor of the motion

### **Discussion and possible action related to Grievance #6626 Gaylene Fukagawa, and Grievance #6661 Ashley Randolph, Department of Corrections – Action Item**

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated these grievances were similar enough in nature to compare to the Prost grievance and the Butler and Jones grievances last heard September 5, 2019.

Co-Vice-Chair Beigel asked to clarify the date.  
Chair Puglisi stated the Committee did not have jurisdiction to grant the proposed resolution of back pay for years of service.

Chair Puglisi stated the back pay was granted from the event date of the grievance to present.

Co-Vice-Chair Beigel moved to grant grievance #6626 and #6661 based on prior decisions (EMC Decisions #23-18, #35-19 and #36-19).

Member Whitten seconded the motion.

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

**MOTION:** Moved to grant grievance #6626 and #6661 based on prior decisions (EMC Decisions #23-18, #35-19 and #36-19).  
**BY:** Co-Vice-Chair Beigel  
**SECOND:** Member Whitten  
**VOTE:** The vote was unanimous in favor of the motion.

**Discussion and possible action related to Grievance #6724 Dwayne Baze, Department of Corrections – Action Item**

Chair Puglisi opened the Committee for discussion.

Chair Puglisi stated the information HR has to determine the minimum qualifications of a different individual, other than the grievant is confidential.

Chair Puglisi stated the grievant was contesting the eligible list and if there is a dispute with the list, that would be appealed to DHRM or the Personnel Commission within 10 days.

Co-Vice-Chair Beigel stated she saw the issue as being with DHRM and why the agency did not request removal of the grievance.

The Committee discussed eligibility lists, prior job testing, minimum qualifications and recruitment.

Chair Puglisi stated the grievant was not contesting his own qualifications, but rather grieving the minimum qualifications of the person who got the job.

Member Whitten moved to deny hearing for grievance #6724 as the EMC lacks jurisdiction over this grievance.

Member Thompson seconded the motion.

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

**MOTION:** Moved to deny hearing for grievance #6724 per NAC 284.695 subsection 1, the EMC lacks jurisdiction over this grievance.

**BY:** Member Whitten

**SECOND:** Member Thompson

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

**7. Public Comment**

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

**8. Adjournment**

Chair Puglisi adjourned the meeting at approximately 1:27 pm.