



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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Meeting Minutes of the Employee-Management Committee

Date: February 04, 2021

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

Committee Members:

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

Employee Representatives

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

Staff Present:

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

1. Call to Order

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

2. Public Comment

There were no comments from the audience or Committee Members.

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

Chair Beigel opened the meeting with Committee introductions.
Chair Beigel swears in all the witnesses attending the hearing.

4. Adoption of the Agenda – Action Item

Chair Beigel requested a motion to adopt the agenda.

Gerald Tan and Scott Husband requested to the board that all three grievances be presented as one case as they are all for the same reason to grieve. David Eckard Grievance #5908, and Jesse Haines Grievance numbers #6050 and #6123.

MOTION: Moved to adopt the agenda, combine agenda items #7, #8, and #9 to be presented as one.

BY: Member Bauer

SECOND: Member Russell

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

5. Discussion and possible action related to Grievance #5908 David Eckard, and Jesse Haines Grievance #6050, and #6123. Department of Corrections – Action Item

David Eckard’s Grievance #5908 was heard simultaneously with NDOC Jesse Haines Grievance #6050 and #6123. Officers Haines and Eckard were represented by Josh Hendrickson, Esq. The agency-employer, the State of Nevada, Department of Corrections (“NDOC”), was represented by State of Nevada, Office of the Attorney General Deputies Attorney General (“DAG”) Gerald Tan and Scott Husbands. Associate Warden Robert Hartman (“A.W. Hartman”), Associate Warden Jeremy Bean (“A.W. Bean”), Officer Haines and Office Eckard were sworn in and testified at the hearing. There were no objections to the exhibits presented for the hearing.

STATEMENT OF THE CASE

Officer Eckard testified that he was a correctional officer who had worked at High Desert State Prison for 7 years. Officer Eckard further testified that he was currently working a straight 40-hour shift, and had last worked a variable shift during 2018, which he had worked for one year. Officer Eckard indicated that his daily shift generally started when he reached his post (assigned duty location), but before reaching his post had to go through the muster process of checking in with the supervisor on duty to get the assigned locations and perform a uniform inspection. Officer Eckard stated that he did not start to receive payment until he was at his post at the scheduled start time of his shift.

Officer Eckard testified that he arrived at his work premises approximately 30 minutes before his shift started, and that the first thing he did when arriving at work was to check in with the supervisor performing muster check in, which was performed before passing through security, and that muster was performed in the gatehouse. This involved checking in with the supervisor who performed uniform inspection and assigned duty locations for the day. Officers might also receive a briefing of what had happened during the day at muster, such as incidents that happened on the yard. The briefing sometimes might concern potential safety issues, according to Officer Eckard. Officer Eckard also testified that if an officer were assigned to search and escort the officer would be assigned gear and would have to check in with operations to get pepper spray, radio, and keys. The officers would then go to the search and escort office.

Officer Eckard indicated that as he was not in search and escort, after muster he would go to his assigned duty location, which could vary if his post changed. Officer Eckard explained that a post he had held last year, sick and annual, involved covering for any officer off for sick or annual leave. Thus, according to Officer Eckard, he could have ended up at any post in HDSP.

Once he arrived at his post, Officer Eckard stated that the first thing he did was receive a briefing, which concerned what went on that day or any incidents or issues, from the officers leaving the post, and picked up his radio and keys from the unit officer. Officer Eckard indicated that the briefing was to allow the oncoming officer to man the post safely. Then, according to Officer Eckard, the arriving officer assumed the post and shift. For the actions described, such as picking up keys and receiving the briefing.

Officer Eckard stated that he was not paid for any of the time spent performing those actions, and that completing those tasks could take approximately 20 minutes each morning, depending on where the officer was assigned, with an average time of 10-15 minutes. Following the end of shift, Officer Eckard testified that the officers were required to provide a pass-down of information, and that one of the officers at the briefing would be doing so off the clock. Following the pass down according to Officer Eckard, he walked back through the yard to the front of the facility, and that this averaged about 15 minutes one way. Officer Eckard further testified that if an officer saw any incidents on the yard they were required to respond, and so would be considered on duty if any incident arose.

Officer Eckard stated that equipment picked up at the start of the day was returned at the end of the day, and that these activities took about 10 minutes to complete at the end of his regularly scheduled shift.

Officer Eckard testified that he spent on average approximately 30 minutes performing work off the clock for which he was not compensated.

Officer Eckard stated that he had never requested pay for that time because it was his understanding that NDOC policy would not allow payment for that time, but that he had filed this grievance to be paid for that time.

Upon cross examination, Officer Eckard testified that he had never submitted a timesheet or made a formal request to be paid for overtime for the time in question. Officer Eckard stated that in the past he had only been paid overtime if he had been relieved late, and that he had been paid this time by submitting a Form DOC 1000.

Officer Haines testified that he had worked at Northern Nevada Correctional Center (“NNCC”) for over 6 years. Officer Haines stated that he had worked 5 days a week, 8 hours a day, and had worked that schedule for 4 or 5 years.

Officer Haynes testified that it was his understanding that he was paid from the time of his scheduled shift, as opposed to the time he spent completing other actual activities.

Officer Haines stated that he was required to be at his post at the start of his shift, and that he was required to complete all of the activities referenced by Officer Eckard prior to the start of his shift, such as muster, roll call, and complete the activities at the end of his shift. With respect to the briefing, Officer Haines stated that it was beneficial to know certain information, as he might choose to add certain equipment to his duty belt which he might not normally carry.

Officer Haines also stated that if an officer were on search and escort the officer would be required to collect keys, radio, and possibly other equipment. Officer Haines further stated that after he collected any assigned gear he went to his assigned post, and that while crossing the yard the officers were required to respond to any incidents that might occur. Once at his post, Officer Haines was required to go through a pass down with the officer he was relieving, and that he was not paid for those activities.

Officer Haines also had a pass down at the end of the shift, and that there was no overlapping of the scheduled shifts that would allow both officers to be paid, so one officer was doing the pass down off the clock at every shift. Following the pass down Officer Haines crossed the yard back to the front, and that while crossing he would need to respond to any incidents in the yard, which he said has happened with him. Officer Haines also stated that he returned any equipment he had picked up before leaving the facility.

Officer Haines said that he had put these activities on his timesheet two years ago but that NDOC just changed his timesheet, and that it was his understanding that it was NDOC policy not to pay for that time.

Officer Haines further indicated that one of the reasons he filed his grievances was to be paid for this time. Officer Haines stated that he spent approximately 30 minutes performing the activities in question beginning when he showed up for muster until the start of his shift, and then after his shift, until all equipment was returned, and all paperwork was finished.

Officer Haines testified that his current assigned post was for Unit 8, and that there were different posts in that unit, as it was a building. Officer Haynes said that the building was large, two stories high and was about 150 yards long. Officer Haines stated that in 2020 he had been assigned to Unit 6, but that it was shut down, so he was then put in a COVID quarantine unit, which was Unit 5. Officer Haynes was also assigned to offhand units during 2020. Officer Haines testified that if he were assigned a different post than Unit 8, he would still go through the gatehouse to get his shift from the supervisor. Officer Haynes said that he has requested overtime from NDOC other than the current grievance and was denied.

Member Parker asked both Grievants if the activities were codified in policy within NDOC for the pre-and-post activities described. Officer Eckard stated that he remembered there was a procedure for muster that included compensation for the work-related duties, though it had been removed from the operational procedures. Officer Haines stated that the activities were codified in AR 301, he thought, where there was a paragraph that said that an officer had to be at his or her unit in time for the briefing/debriefing.

Attorney Hendrickson also stated that at least several of the activities testified to were codified in the AR's. The activity which Grievants were contending was the principal activity was muster, and specifically concerning that activity was AR 326, which read all correctional staff would report to the shift sergeant upon arrival to ensure their status if required to work mandatory overtime, and that there was AR 350, which provided for the uniform inspection.

Attorney Hendrickson stated that beyond the AR's, it was his understanding that the correctional officers were instructed that these activities were required, and it was a matter of policy that they be performed daily.

Member Thompson stated that the back of Exhibit F of Officer Eckard's exhibits had the applicable AR's.

Member Parker asked Officer Haines about his testimony where he stated there had been instances, he had to respond to that occurred after his shift and asked if he was paid overtime for those responses.

Officer Haines replied that he was not paid overtime for the response.

Chair Beigel asked Officer Haines if he had requested to be paid for that incident, to which he responded that he did not think so because he was coming into shift.

Officer Eckard was asked the same question as Officer Haines concerning pre-or-post shift response to incidents, and he responded that he had not had any incidents that he had to respond to post-or-pre shift.

Member Bauer asked Officer Eckard if NDOC were to shift the pre-activity requirements to being completed upon arrival at assigned post, would there be a detriment to safety and security?

Officer Eckard said it was just NDOC's policy that the supervisor was required to check in the officers at the gatehouse prior to the beginning of their shift and arrival at posts so that the officers could receive their assigned duty location for the day and pick up equipment if necessary.

Officer Haines responded to Member Bauer's question that with respect to the muster, and that if the officers did not know where they were going, they needed to check in first.

Officer Haines also said that the officers needed to know where they would be assigned to pick up necessary equipment. Officer Haines further stated that when the officers check in with a supervisor, they will let them know who was on the yard in case of a riot, so that staff could be accounted for.

Attorney Hendrickson asked the grievants if the information they received during muster was information that they needed to know at that time before they crossed the yard so that the officers could cross the yard safely and maintain the security of the inmates in the facility during transit over to their assigned posts, to which Officer Eckard responded yes.

Officer Haines responded that it was important to know if the yard was on a complete lockdown because there was a staff assault at a different facility and that whole facility had been placed on lockdown, and that the information received at muster was necessary for the safety and security of themselves, and inmates.

Officer Haines also stated that his underlying concern was that he be paid for the activities regardless of where they occurred.

Member Thompson asked what was the start date from which the officers wanted to be paid from?

Attorney Hendrickson responded that the Grievances were similar to previous Grievances heard by the EMC where the EMC had decided to go back and award 20 days before the date of the filing of the Grievance, he thought was the minimum, and that in actuality, per the state law that provided for relief, Grievants should be able to recover back pay back to a date of three years before

the filing of their Grievance, and that there was nothing in the law that would prevent pay from being awarded for that entire period or that limited payment to those 20 days.

Attorney Hendrickson stated that the nature of the violation was one that was continuous and ongoing, and that generally when you had a continuous violation it was backdated to the start of the violation as far as the statute of limitation reaches, which was three years, and that was what Grievants were seeking in this situation.

Attorney Hendrickson clarified in response to Member Thompson's question that the start date from which Grievants were seeking damages was August 26, 2018, the date on which the grievances were filed.

A.W. Bean testified that he was currently employed at High Desert State Prison ("HDSP") and had held his position since December 2017. A.W. Bean stated that he had worked for NDOC since April 2001. A.W. Bean then described the organizational structure at HDSP as it related to chain of command. There were several ranks within NDOC's chain of command. The chain started with the correctional officer trainee, who had not been through pre-service training, but who were still considered correctional officers in a probationary status. Then there were correctional officers, senior correctional officers, correctional sergeant, correctional lieutenant, associate warden, and warden. Associate Warden, A.W. Bean's job duties and responsibilities included overseeing all security operations and all custody staff responsibilities, including post assignments, shift bidding, anything supervising custody staff, supervising maintenance, and culinary operations.

A.W. Bean stated that he was familiar with NDOC regulations and policies and procedures. There were 650-700 employees who worked at HDSP, but not all employees fell under his chain of command.

A.W. Bean stated 494 employees were custody staff members (which included correctional officers) and 80 were non-custody staff members.

A.W. Bean stated, the correctional officers worked on shifts, and there were quite a few different shifts at HDSP. Currently most shifts were from 5:00 am to 1:00 pm, 1:00 pm to 9:00 pm, and 9:00 pm to 5:00 am. To the extent the correctional officer worked outside of those shifts. It would be considered overtime, and the officer would then be paid for that overtime. A correctional officer was paid for overtime, by first having it authorized and recorded by the shift commander, so the correctional officer would first have to make notification of the overtime event and fill out a DOC 1000.

A.W. Bean stated, the correctional officers would need to submit their time sheet with the overtime on it, the supervisor would verify the DOC 1000 against NDOC's staffing system to verify the overtime, and that it had been reported, and then the overtime would be approved or denied based on those facts.

A.W. Bean then stated in looking at exhibit B, page 18, in the Employer Packet, Officer Eckard had signed an NDOC variable work schedule, a 40-hour, 80-hour work variable schedule.

A.W. Bean stated, these schedules were signed and agreed to every year at shift bid. With respect to overtime and whether there was a difference between a variable schedule and a standard workweek schedule.

A.W. Bean stated that ultimately the 40-hour variable or innovative work schedule meant an employee had to be in a paid status 40 hours or more prior to the approval of overtime.

A.W. Bean stated, if an employee had an LWOP or AWOL, and was in unpaid status for any part of the 40 hours, if the employee were to work any overtime, however many hours of that LWOP or AWOL were on the officer's timesheet, that many hours would go from the overtime to offset that 40 hour requirement. An 80-hour work week was handled in the same manner, except that it was on a bi-weekly basis, and not a weekly. In looking at the first full paragraph where Officer Eckard had placed an "x" and provided he did not exceed 40 hours in a work week without supervisory approval.

A.W. Bean was asked if he was saying essentially that no NDOC employee shall work overtime unless it was approved?

A.W. Bean stated yes, and that all overtime required pre-approval.

A.W. Bean stated in looking at Exhibit D, page 22, AR 320, that AR 320 covered salary administration and went over overtime requirements and the approval process in awarding overtime.

A.W. Bean stated that AR 320 contemplated correctional officers submitting their overtime through NEATS. In looking at AR 320.06, on page 26 of Exhibit D, he referenced to an exception report, that meant as an employee of the State of Nevada they would be paid their standard 80 hour pay regardless, and the only time the employee's pay would differ is if the employee put an exception in his or her timesheet. An example would be sick leave, it would need to be annotated in the employee's timesheet, as would overtime. He stated if the employee did not go through that process, the employee would only receive the employee's standardized pay, and any deductions the employee utilized for their leave categories would not be taken. AR 320 also contemplated that employees could be disciplined for falsifying a timesheet.

A.W. Bean stated that AR 326, posting of shifts and overtime, governed overtime for employees, and he believed that AR 301 might touch slightly on overtime, and that AR 322, Types of Leave and Procedures (Exhibit E), also talked a little bit about the overtime process.

A.W. Bean stated that he had met Officer Eckard a few times, and that they had a professional relationship. He stated that there were reasons a correctional officer might work overtime, including the reasons the two Grievants had stated earlier, and if there was a correctional officer who failed to appear at the start of his or her shift, or other officers might be ill and report that fact late, or a staff member may need to respond for safety and security reasons.

A.W. Bean reviewed Officer Eckard's records concerning overtime, and testified that Officer Eckard had been paid overtime in the past, and that since June 23, 2020 Officer Eckard had been paid for over 64 hours of overtime, and that there were 20 different occurrences, and in those occurrences it appeared that 10 of them were mandated or scheduled overtime.

A.W. Bean stated that Officer Eckard had not, to his knowledge, ever put in for overtime and been refused that overtime. That a correctional officer might request overtime and not be paid for that overtime if 3-4 days after the fact the employee put down the overtime in his or her timesheet which the employee never reported to the supervisor, and for which there was no record.

A.W. Bean stated that if NDOC could not verify that an employee had worked the overtime then that overtime which the employee requested would be denied as unverifiable. With respect to pre-shift muster, if the staff were required to be at their post at the start of their shift. It took about 30-45 minutes prior to the start of a shift; the shift supervisor would go up to the gatehouse and start checking people off as they come through the gatehouse. Then the supervisor would then identify the correctional officer by checking off who they were, and tell the officer what their assignment was, and send them to their post.

A.W. Bean stated, any gear that the employee needed to use was generally kept in the housing assignment or the post the officer was assigned to, with the exception being the search and escort officers or the core service positions.

A.W. Bean stated that search and rescue generally had responsibility over the entire institution and could be required to respond from one place to another in the facility based on the need for a security presence.

A.W. Bean then stated that the core services officers were not relieved, nor do they relieve other employees. Some items, such as the baton and handcuffs, the officers keep with them and took home with them.

A.W. Bean stated with respect to pass-downs, that there was no mandate for pass-downs, and as far as he was aware, they were not being conducted. A.W. Bean stated that as the officers came through the gatehouse, the supervisor might make a statement that the yard was locked down, but that he would not necessarily consider that a pass-down.

A.W. Bean stated at HDSP, they had shift to shift briefings, which were sent out by email, and that the emails indicated the status the institution was in.

A.W. Bean stated that there were no mandated pass down of information for officers coming off shift. With respect to gear that needed to be returned, using housing units as an example. That generally what occurred was that all the gear was stored in the central control post of the housing unit. The exchange of equipment generally occurred by the relieving officer, if the officer to be relieved was in the control post, going to the control post, retrieving the equipment from the officer who had the equipment, signing the equipment to himself or having the control officer do that, or the relieving officer would go to the floor officer where the assignment was actually located, and they would hand off the equipment and annotate it after the exchange.

A.W. Bean stated that the only mandate that he was aware of that applied to officers at the start of their shift and that they arrive at the institution in time to report to their posts at the start of their shift, which was in AR 326.

A.W. Bean also stated that there was no written mandate for the muster proceeding as described by Officer Eckard's testimony.

A.W. Bean stated that if Officer Eckard was leaving and an incident happened, there was a chance he might get called back to duty, and that he would be paid for that time. In testifying about Exhibit C, the variable work schedule request, which stated that if an officer were on a 40-hour variable, overtime would be considered only after working 40 hours in one week. That it was NDOC's position that if an officer were on a 40-hour variable week and the officer worked more than 40 hours that week the officer would be entitled to overtime that week. If an officer were on an 80-hour variable work week, The officer worked more than 80 hours the officer would be entitled to overtime for those hours.

A.W. Bean testified that generally Officer Eckard was scheduled for a 40-hour work week.

A.W. Bean stated that Officer Eckard's scheduled time would not include activities like muster and walking across the yard, and that the officer would not be paid for those activities.

A.W. Bean also stated that before passing through security a correctional officer was required to participate in roll call, and that an officer's posts might change due to facility needs.

A.W. Bean stated if there were a safety issue specific to a particular shift that would not be communicated to the officer during muster unless it was an utterance by a supervisor as the officer passed through.

A.W. Bean stated the communication emails referenced by the officer were generally sent out at the start of every shift.

A.W. Bean stated that there were a couple of different processes for disseminating information.

A.W. Bean stated that there were supervisory personnel assigned to each quad, and that each quad had four housing units, and that the supervisor was responsible for conducting operations in those four housing units and relaying information back and forth to staff that was pertinent to the operations of that area.

A.W. Bean stated that the email system briefing process had been reinstated after being discontinued for several years.

A.W. Bean stated that muster had not been conducted for quite some time at HDSP, and one had not taken place for as long as he could remember.

A.W. Bean stated that there were shift logs in every housing unit, and there was the NOTIS system that had shift logs where issues that were occurring would be reported, and that generally was the process for officers understanding what was going on at their posts when they arrived for duty.

A.W. Bean did not believe there was anything to alert officers of safety concerns prior to the officers arriving at their posts. The email referenced would be sent out on the previous shift, prior to the oncoming shift reporting, and that the reporting officers would review the email once they arrived at their posts. With respect to gear that needed to be collected for search and escort.

A.W. Bean stated that because those officers were generally responsible for the entire institution, most of their equipment was checked out from the central control post, which only occurred from 5:00 to 1:00 for shift change.

A.W. Bean stated that the rest of the equipment was handed off from staff member to staff member, and that the only thing officers would be checking out would be keys, a radio and an MK 9 OC or pepper spray canister. If Officer Eckard was on search and rescue, then he might be required to pick up equipment at the control station.

A.W. Bean stated that the perimeter at HDSP was 2.2. miles, and that it would take an estimated 10-12 minutes to walk from the gatehouse to the farthest point of the yard if there were any incidents on the yard. With respect to the DOC 1000, it was part of the process that an officer would follow to request overtime.

A.W. Bean explained the idea with exception reporting was that the officers were scheduled for 40 hours and any exception to that scheduled work, including work on top of the 40 hours, had to be reported. The officers were required to walk through the gatehouse, receive their assignments for the day and pick up necessary equipment prior to the start of the officers' shift, with the exception of search and escort, when search and escort checked out their gear they were considered on duty.

A.W. Bean stated that the officers were not paid for the time between muster/receiving the officer's assignment and going to the officer's post. If he received a request for overtime for any pre-shift activity, he would research it to find out why the request was submitted, but if he could not verify it, he personally would not approve such a request.

A.W. Bean stated that he did not know if he would consider checking in a work function, and that NDOC had not in the past to his knowledge paid out for an officer checking in at the gatehouse, receiving his or her assignment and then going to the officer's post, but did not know if he had seen a lot of requests for payment for these activities. Even though the work in question was performed everyday it would still be an exception on the officer's time sheet because it would be more than 40 hours. NDOC did not log in the time at which the officers arrived at the gatehouse or for muster, and that a record was kept concerning who was on the facility. NDOC kept records that would be estimated to the start of an officer's shift, although he further stated that it was possible to keep a log of when officers arrived at the gatehouse. He noted that sometimes officers arrive an hour before their regularly scheduled shift, but that relief was not allowed until 15 minutes prior to the end of a shift, as whoever was being relieved was still on shift as far as the records went.

Member Thompson asked what method NDOC use to log in correctional officers?

A.W. Bean stated that the log in process was a combination of both electronic and paper, and that there was an electronic system for staffing called the CHRONOS system. NDOC sergeants were responsible for posting the shift and were offset from the shift by one hour. The shift sergeant would do the roster in the electronic form annotating whoever is on and where. The shift sergeant may also move people from different positions, annotate sick leave, and notify anyone that was required to work overtime to fulfill minimum staffing. Once all of that was done, the shift sergeant would print the roster out and take it to the gatehouse. As the staff members came through to report for work the sergeant would check the staff member off on the paper roster, and then after that was complete, they would go back down and annotate any discrepancies in the computer for the electronic report.

Member Parker asked if the supervisor went to the gatehouse about 20 minutes prior to the beginning of the shift to be able to hand out the assignments?

A.W. Bean stated the supervisors went out 35-40 minutes in advance.

Member Bauer asked to confirm for the record if all that was required currently or in the past year of staff is that they show up at the gatehouse, ensure that the supervisor checks them off to make sure they are logged as present, receive their assignment and then cross the yard to their post?

A.W. Bean stated that this was accurate in part, and that the officers did have to clear the metal detector and items had to be screened. He stated that this

screening was required of anyone that came to the institution. The correctional officer encountered their shift supervisor before any of the screening took place, and that the process was a moving process.

A.W. Hartman stated that his duties were like A.W. Bean's, and that his main focus was custody, and all managing aspects at NNCC fell under his purview. He had been an Associate Warden for a little less than two years and had been a lieutenant for 8 years before that.

A.W. Hartman stated that he understood the day to day duties of correctional officers at NNCC. With respect to muster at NNCC, the muster was not a formal muster or codified in any document. At NNCC screening was performed, and after that the officers came into the gatehouse and saw their shift sergeant, so that was a little different than HDSP.

A.W. Hartman stated that the Sergeant checked the officer off a roster and assigned the officer to shift, and that there was no formal briefing, although information was passed on occasion, and that 99% of it was casual talk among co-works while entering.

A.W. Hartman stated that a "good percentage" of correctional officers had the same post assigned to them throughout the year, although officers could be posted at different posts. The process of providing information on where officers would be assigned for the day took about three seconds, and that any information on the current day's happenings might be conveyed to an officer at that time. He also felt that the need to respond to incidents pre-or-post shift had been exaggerated, and the need to do so was few and far between, and most inmate fights only lasted a few minutes, and that such information was not integral to knowing prior to the start of a shift. Generally, unless there was a significant incident, this information was quite miniscule.

A.W. Hartman stated that NNCC did not perform formal uniform inspections at the gatehouse, although he hoped a supervisor would notice what an officer was wearing was appropriate, and the process would take seconds. With respect to gear collection prior to a shift, the only gear collection that was required prior to starting shift were the radio and keys, and that this equipment was at the working location. Everything else such as pepper spray and handcuffs were issued to individual officers when they started working at the facility and were taken home by the officers.

A.W. Hartman testified that the officers were able to reach their posts without a radio and keys. With respect to a pass down or briefing from the outgoing officers, this process again was not formalized or in any document, but when an officer arrived on post to relieve the outgoing officer generally as the equipment was exchanged information might be briefly passed, which took 5 to 10 seconds most days, and just concerned information about what was currently going on in the unit. Altogether, including the activities at the gatehouse, collecting gear, and getting the brief information from the outgoing officer, generally this only took up to a couple of minutes, if that.

A.W. Hartman stated that NNCC's perimeter was about a mile in extent, and it took him 5 and a half minutes to walk across the facility. He expected a correctional officer who was walking to their post prior to shift starting to respond to an incident if they saw one, and if that caused them to work additional time that would justify overtime, and that again these incidents occurring while an officer was arriving or leaving shift were few and far between. NNCC had the same procedure for requesting overtime as HDSP. I would also expect an officer working overtime in such a situation to verbally notify the supervisor on duty of such an event.

A.W. Hartman testified that the pass down time was very brief, and occurred when equipment was being handed to the relieving officer, and was just a quick update on the current activities in the unit, and most of the time was a 30 second activity, and was not required by NDOC.

A.W. Hartman stated after the shift, there was no equipment to return, as the officers were relieved at their posts and exchanged equipment there, unless there was no relief, in which case the equipment was located in locked key boxes and were checked in on the officer's way out of the facility.

Attorney Hendrickson asked A.W. Hartman, if an officer went through screening after arriving at the facility at the start of the day, and they were required to go into the gatehouse, check-in with the shift lieutenant, whether the officer was assigned to a post and checked off on a roster?

A.W. Hartman responded that this was correct. He stated that even officers who were generally assigned to the same post could be assigned to a different post depending upon the needs of the facility, and that this information would be communicated to the officer at the start of his or her shift?

A.W. Hartman stated that he was familiar with the class specification documents for lieutenant and correctional sergeant. He stated that the job duties of at least one of those positions included taking roll, verifying attendance at the beginning of each shift to ensure sufficient officers were available, and were authorization to recommend overtime when necessary by assessing institutional facility needs and availability of personnel to provide adequate security staffing. He also added that the definition of roll call could be interpreted in different ways.

A.W. Hartman stated that there was not an everyday general briefing at muster and did not occur unless there was a significant issue with the prison.

A. W. Hartman stated that there was nothing mandated, nothing documented that NDOC pass down information as staff came in, and there was no set briefing time or anything designating what must be said by the shift sergeant or lieutenant. If there was a serious incident on the yard that might affect officer safety as the officer passed through the yard, that information might be casually communicated to the officers. If there was a major incident that everyone

needed to be made aware of, NDOC would ensure that everyone was aware of the major incident by sending out an email to all staff, and/or perhaps performing a phone briefing when everyone for sure was on shift. If a matter affected one employee, that employee might be individually told about the matter.

A.W. Hartman stated that if an officer saw an incident happening on the yard, he would expect for that officer to respond to the incident, and that it is expected that officers be on alert for potential incidents.

A.W. Hartman stated that every officer is expected to go into the gatehouse, check in with the shift lieutenant, receive their post assignment, walk to their posts and be at their posts by the scheduled start time for their shift. He would expect an officer to arrive at their post by the time they were scheduled to work, and so arrive at the facility by 4:52 am – 4:54 am (if starting shift was at 5:00 a.m.), which allowed time for the officers to walk through the gatehouse and walk to their posts.

A.W. Hartman stated he felt that in leaving their shift the officers would take a similar amount of time, so that the activities took 5-8 minutes at the beginning of an officer's shift and at the end of an officer's shift, and that the officers were not paid for that time, and that if an officer submitted a request for payment he would not expect the officer to be paid for that time, as they were not on duty at that time.

A.W. Hartman stated that NDOC was aware that the officers were completing the activities of walking through the gatehouse and yard, and not being paid for doing so.

Chair Beigel asked if an officer were late, would that be logged into CHRONOS?

A.W. Hartman stated that an officer being late would be logged into CHRONOS and backed up by the timesheets in NEATS.

Member Thompson asked when officers left their shift, did they sign out?

A.W. Hartman stated that the officer did not sign out when leaving, and are assumed to be relieved because the next shift would assign an officer to a unit and would make that check-off, so if there was no one to fill one of those positions then overtime would be used.

Member Parker asked when did the shift supervisor report to the gatehouse to give assignments?

A.W. Hartman responded that about a half hour before shifts began, and that officers could not report to their posts more than 15 minutes prior to the start of their shift. He stated that at his facility they had search and escort assignments. As soon as the officers picked up their keys and radio they were considered on

duty, even if it was 10 minutes before the officers shift began, and that was when the officer would begin to be paid, and that he would assume the relieved search and escort officer would leave at that time.

A.W. Hartman stated that some posts such as the hospital were only staffed for part of the day, so that at the end of the shift of the officer who worked that post, such as Unit 8, there was an electronic lock box and the officer would electronically check in their keys there when leaving, and that the officers were not paid after checking in their keys.

Member Thompson asked if an officer who arrived 10 minutes early, would the officer receive 10 minutes extra pay if the officer left at the end of his or her normal shift?

A.W. Hartman responded that the officer would not receive 10 minutes of overtime, as they were not required to be on duty until the officer's start time, so if an officer chose to relieve another officer early, that action was not approved, although it likely took place.

Attorney Hendrickson stated that in substance NDOC knew its employees were completing the tasks before and after their shift, and were requiring its officers to complete the tasks, and that there was no dispute about that. The tasks constituted work, and NDOC tracked when employees arrived for muster and roll call, and that the time was being tracked, and not paid. That according to Grievants, they completed 30 minutes or more of the activities every day. In turning to Exhibit 2, the declarations from similarly situated class members who had the same experience, these corroborated that the estimates provided by the two Grievants were reasonable and reflective of the actual time spent by the Grievants in performing the tasks.

Attorney Hendrickson stated that with respect to the two wardens who testified about the time they expected activities to take, they never testified to the amount of time taken by the Grievants and spoke to the situation as a whole. It is noted that the shift supervisor went to the gatehouse 30-45 minutes in advance because they were aware officers were arriving for work, and that they would have to complete some tasks connected to the arrival of officers, which supported the conclusion that this was taking longer than the assistant wardens believed. Officers were required to attend roll call, were assigned duties for the day at roll call, their attendance was tracked, they were assigned posts, after which the officers were required to walk to their assigned posts for the day. All these activities were required to be completed prior to the start of shift and were compensable.

Attorney Hendrickson stated that it was clear and unequivocal that the officers should be paid for the activities, and the compensability arguments were covered on pages 9 through 11 of the employee packet. Those sections briefly summarized, that the Department of Labor had recognized roll call was an example of a compensable work activity for law enforcement activities, and it

was critical for NDOC to know who was present at a given time. Showing up for roll call was an activity that constituted work, it was a required activity, and it started the workday, and it followed any activity after that was a compensable activity.

Attorney Hendrickson stated that receiving assignments had likewise been recognized as a compensable activity by case law, in the *Dolby* case, and that NDOC knew these compensable work activities were being performed and were simply not paying its employees for the tasks.

Attorney Hendrickson stated that the half hour of work activity alleged by the Grievants were corroborated by the declarations and by the fact that the shift supervisors went to the gatehouse 30-40 minutes before the scheduled shift changes. It was 10-16 minutes in A.W. Hartman's estimation, and that A.W. Bean testified that the walk alone took 10-12 minutes each way, so that without considering muster, the estimations of the associate wardens tracked what the Grievants had stated with respect to time spent completing the activities.

Attorney Hendrickson stated that Grievants were seeking to be paid for work compensable under state law, not federal law, and that many of NDOC's defenses only applied in the context of federal law, and that the argument that the State was immune to FLSA claims was irrelevant, and had no bearing on whether Grievants were entitled to relief under state law, and that issue had already been resolved in the Butler and Jones grievances.

Attorney Hendrickson stated the amount of work performed was a defense to federal and not state law, and that under Nevada law an employee was required to be compensated for all hours worked, regardless if the time worked was one minute, and that in any event 10 minutes or a half hour was not a de minimum amount of time.

Attorney Hendrickson stated that NDOC could have easily tracked and paid out the time in question, and that NDOC tracked when an employee was late and deducted for that time, and that NDOC simply did not want to pay for the time the officers worked. With respect to the Portal to Portal doctrine precluding relief because some of the activities might not be indispensable, it was again a federal specific defense inapplicable to state law claims, and that the State of Nevada had never adopted to Portal to Portal limitation. With respect to the grievances not including dates and time, the Grievants were actually specific about that, and that the dates and times would be every shift they worked, and they were specific in the estimations of their time spent in completing those tasks, and so they should be paid for those tasks. There was some suggestion, that the Grievants should have submitted a DOC 1000 request to obtain payment for time worked. The Grievants were required to request this overtime before and after every shift, but then NDOC said even if requested the overtime would not have been granted.

Attorney Hendrickson stated that Officer Haynes specifically requested overtime and submitted a DOC 1000 and was denied, and so the proper route at that point was to file a grievance.

Attorney Hendrickson stated that both Grievants were required to complete the work in question, and that both wardens testified that the roll call, muster, assignment of posts and transit to the assigned posts were required to be completed before and after the assigned shift, and were not optional.

Attorney Hendrickson stated that the standard for payment of work was not whether the work was required by an employer, but whether it was suffered or permitted to be performed by the employer. In this case, the NDOC clearly knew about the activities Grievants were performing and made no effort to stop it from occurring, and really required it but did not want to pay for it. With respect to the variable work schedule, as testified by the wardens and Exhibit B, Nevada provided for overtime for work that was over 80 hours worked on an 80 hour variable schedule, and that in any event that argument would not apply as the Grievants had been working straight work schedules for the past few years.

Attorney Hendrickson stated that the Grievants were requesting relief on behalf of all correctional officers who were similarly situated and asked that the grievances be allowed to be granted on behalf of all similarly situated correctional officers.

The NDOC stated that what the FLSA and similar statutes were designed to do was compensate employees when they were required to exert a substantial amount of time or effort and was “designed to avoid the evils of overwork.” The Grievants, according to NDOC, were seeking compensation for no work at all. Per NRS 281.100(2) defined when the workday started, according to NDOC. The point at which Grievants were defining their start of day, was taking charge of equipment, according to NDOC. NDOC noted that, except for search and escort duty, the officers obtained keys and radios from the posts.

The NDOC stated that the point at which the employee clock started was when the officers arrived at the posts.

The NDOC stated that when incidents happened there might be an expectation that correctional officers would be paid for activities that they were required to perform, but that those instances were rare. Additionally, it was pointed out that by the NDOC that they would be unaware of each of these incidents unless the time was reported in the appropriate manner, so it was impossible for the NDOC to knowingly be permitted or suffered the activities to occur, and that only one Grievant, Officer Haines had reported the activity one time.

The NDOC stated that even if the EMC found that these pre-or-post shift activities were compensable, the federal courts have said that they will not compensate for de minimis amount of time, and that was what occurred here, as going through muster and roll call involved receiving assignments and receiving facility information that took seconds. With respect to debriefing, that process

normally took mere seconds, and so the Grievants wanted to be compensated for the walk from the gatehouse to their posts, which took a few minutes, while having taken charge of no equipment from NDOC.

The NDOC stated that it was unreasonable under federal and state law that simply walking to your post was compensable time. With respect to the time limits, NDOC stated that the EMC had already decided the issue in the Prost decision, Decision No. 23-18, and that these types of claims are limited to 20 working days prior to the grievance. The NDOC stated that the grievance process was limited to the particular grievants, and that this fact came from language listed in the NAC which defined a grievance, and that the grievance must affect the employee.

Attorney Hendrickson responded to NDOC that the workday for correctional officers began when they started working, not when they picked up equipment, and in this case what started the work day was the roll call and post assignments, and after that everything must be paid.

Attorney Hendrickson stated that the Grievants were performing tasks for the benefit of NDOC.

Attorney Hendrickson stated that in walking across the yard one of the things that the officers were paid for as a correctional officer was to be on guard and ready to respond to an incident, and that there was no dispute that the officers were required to respond to any incidents they encountered on their walk across the yard.

Attorney Hendrickson stated that being entitled only to pay for a substantial amount of work was a federal standard in the Portal to Portal Act, and that the limitations there did not apply to state law.

Attorney Hendrickson stated that the suggestion given by NDOC that if the Grievants had submitted the DOC 1000, they would have been paid was not true, as Officer Haines had submitted that form and had not been paid, and that Officer Eckard had asked if he should submit the form for the activities in question and had been told no.

Attorney Hendrickson stated that the NDOC had the obligation to either pay their correctional officers for the work they performed or stop them from performing the work in question.

NDOC responded that the reality was that the roll call claimed by the Grievants was something where information was obtained by the officers passively walking through an entrance, and that the officers had to go through that entrance regardless of whether they received any information.

NDOC stated that although officers were expected to be on guard, the team that the wardens expect to respond to incidents was the team that was on shift, not the officer leaving shift, and asked that the EMC deny the grievances.

The EMC deliberated on the grievances.

Member Parker stated that both assistant wardens' testimony reflected that there was a requirement to appear at the gatehouse to receive check in shift information, and that A.W. Hartman expected that someone would show up 15 minutes prior to the start of their shift to perform these activities, so that there was an expectation that the officers would arrive early to perform work, and that this was required.

Member Parker stated that both A.W's alluded to the fact that if an officer had put in for overtime for any of these activities they would not approve the pre and post activities as overtime, which supported the expectation that the officer would not be paid for these activities.

Member Parker stated that DAG Tan had referenced Decision #23-18, the restrictions in the amount of time which could be covered for the Grievants being limited to 20 days and agreed with that determination.

Member Thompson stated that she agreed with Member Parker, and that the EMC could not go back three years, and that she did not believe the EMC could hear all officer grievances as though it were a class action.

Chair Beigel stated from the EMC training, that grievances were between an employer and employee.

Member Thompson stated that because the officers were required to be at roll call, and because they were required to receive their assignments there the officer should be paid from that point.

Member Bauer stated that NRS 284.384 specifically defined a grievance, read the definition, and noted that typically the EMC did not act upon matters that were like "class actions", and that the procedure was an administrative procedure, not a court procedure, and so the EMC could only specifically act upon the two Grievants' matters.

Member Bauer stated when she compared the instant case to the Jones, Butler and Prost decisions, notwithstanding the legal argument as to whether or not Nevada has waived sovereign immunity, that in Jones, Butler and Prost they took charge of equipment, and picked up keys and were responsible for working with keys in hand, from the time the keys were picked up at the gatehouse until the employee arrived at the medical building, and so in looking at NRS 281.100, taking charge of equipment was a major part of those prior grievances which was not part of the present grievances being heard today.

Member Bauer stated she was not persuaded that walking through a gatehouse, which everyone was required to do, constituted work, and if in fact the Grievants and employees were just continuing to walk from the gatehouse to their posts and the supervisor checked them off as present and told the officers their assignments she was unsure those activities necessarily constituted work.

Member Bauer stated that she was using a definition for work, a physical or mental exertion. That although she was remotely working now, that remote work was demonstrated by log-able time.

Member Bauer stated that the issue for her was whether or not walking through the gatehouse and metal detector constituted work and whether the Grievants were entitled to compensation under the NRS', and was inclined to think the answer was no.

Member Parker stated that on the attributable work time she had thought that the supervisors gathered information to determine whether or not an employee showed up, and because of the activities were required to show up at least 15 minutes early, and that if the officers could show up two minutes before their shift at the gatehouse and not be docked time for not making it to their post by the start of their shift, she would agree with Member Bauer.

Member Parker stated she believed that if a supervisor was checking in officers, it would only take a second or two to note what time the officers came in.

Member Parker stated she agreed with the other two EMC members and that the EMC could not hear and decide anything like a class action.

Member Bauer stated that after the Prost decision each case was dealt with separately, and a decision was made separately on each grievance, so that was not a class action situation.

Member Bauer stated she had heard testimony from the associate wardens that the employee was not exerting effort, that the employee was walking while the supervisor noted the employee was present, because the employee had reported to work and because the employee was on the premises for safety and security purposes.

Attorney Hendrickson stated that Nevada law tracked federal law in what constituted work, and that Nevada law recognized as hours worked all time that an employee must be on duty, or on the employer's premises or at any other prescribed place of work, and that work was not limited to physical or mental exertion.

Chair Beigel stated that if she parked across the parking lot at the Grant Sawyer Building, she had to then walk across the lot, and had to wait for the elevator to

get to her floor, she equated that travel time to the present grievances, and whether or not the Grievants were in actual work status.

DAG Tan stated that the EMC did not need to rely on federal law, that NRS 281.100 told us when the workday started, which was when the employee took charge of equipment.

Member Parker stated that she wanted to bring up that in the two different employees, in Grievance #5908, and No. #6050 it sounded like there was a pickup of equipment prior to, so that “muddied the water, a little bit” if the workday started when the officers took control of equipment.

Member Parker also stated that if there was a requirement to meet before an officer’s shift started, she herself would expect payment, and the meeting was not at someone’s desk, it was at a specific location.

Chair Beigel questioned when the equipment picked up, whether it was different in the two different prisons, as the picking up of equipment triggered the EMC in Prost, Butler and Jones grievances, and whether the EMC wanted to consider that in this situation.

Member Bauer stated that the difference between the associate wardens’ testimony was where the supervisor would check in the officers at HDSP, where the employee would be checked in prior to going through the metal detector, and at NNCC the employee was checked in after going through the metal detector, but the employee was still checked in by a supervisor and it was still a brief process, and that the only difference was that the search and escort staff would pick up their equipment, keys and radio, closer to the gatehouse, or at some point ultimately other than their final post. However, for an average custody officer, they would still get their keys and radio at the time they arrived at their assigned post, and central command or the central area would give them their keys and radio.

Chair Beigel stated that if the officers were picking up keys at the very beginning as in prior grievances the issue would be clearer, but she was leaning toward the time in question/activities not being compensable.

Member Bauer stated that to her without picking up equipment or without some of the provisions in NRS 281.100(2), it was almost like officers walking to assigned posts was part of their commute, so that without officers taking charge of equipment or entering into any conveyance, it was like once the officers went through the gatehouse and metal detector it was almost an extension of their commute until they arrived at their posts. In the past grievances there had been demonstrated work and demonstrated taking charge of equipment.

Member Thompson stated that what Member Bauer stated made sense to her.

Member Parker agreed with the statement Member Bauer made sense in one grievance, but not the other, and if it took 15-20 minutes pre-shift to go closer to the gatehouse to get the equipment, rather than at NNCC, where it could only take 5 minutes, that those were two different scenarios, because the officers were taking charge of equipment, so that did mean only search and escort was implicated.

Member Bauer stated she thought if the issues Member Parker brought up were looked at, if one were looking at the amount of time that someone was on premises before he or she arrived at the assigned duty post, that went to the argument, in favor or opposed to, whether it was de minimis, which could be part of a federal claim, so maybe the line was being blended between federal law vs. Nevada law, and there was already a Supreme Court ruling that discussed integral and indispensable situations, and the de minimis situation, so that if the EMC were looking at whether something was compensable in Nevada, to her it was compensable whether one minute was involved or 20 minutes were involved.

Member Parker stated that Grievance #5908 sounded like there was more than a minute from the time that the officers took control of the equipment, and if that was the impetus for making the decision in Grievance No. 23-18, then that same rationale should be applied to Grievance #5908, at least.

Member Bauer stated that in the Prost, Butler and Jones Grievances, she recalled when compensable activity was discussed what was meant was taking charge of keys and signing into a logbook. That action, for those Grievances, occurred at the gatehouse, where with the present Grievances she heard no testimony that they were taking possession of keys or radio or anything, or even signing a logbook at the gatehouse.

Member Parker asked if the EMC could ask for clarification on Grievance #5908, the location of where the officers were checking out the equipment, which was testified to?

Attorney Hendrickson deferred to Officer Eckard to answer Member Parkers question for his Grievance.

Officer Eckard testified that after he checked in with the supervisor at the gatehouse before going to the yard, he had to go to operations to check out equipment from the main control center, if he was assigned to search and escort.

Officer Eckard stated that if he was assigned to a different area, he would not follow that same procedure.

Member Parker asked Officer Eckard how frequent was the assignment to search and escort for his duties?

Officer Eckard replied that it varied sometimes. For assignments to search and escort could be a biddable position, although currently it was an exempt post at HDSP.

Member Parker then asked the same question to Officer Haines, how frequent was the assignment to search and escort for his duties?

Officer Haines replied that his current position changed every year, due to shift bidding, and currently the keys were in Unit 8, which was across the yard. If he was assigned to search and escort, he would pick up the radio and keys, and possibly a metal wand. Officer Haines stated before he could get the keys, he said he had to check in.

A.W. Hartman stated that their search and escort officers picked up their keys and radio from the control post which was about 50 feet from the gatehouse, and that when the keys and radios were picked up the officers were on duty.

A.W. Hartman also stated that the keys were timestamped, so that when they were checked out and returned they could be tracked, but that the radios were signed in and out from a control officer, who wrote in the time the radios were checked out on a log.

Member Beigel stated that if the officers were performing search and escort, they may have had compensable time if they picked up equipment, but the other positions not necessarily, and that was how she was feeling.

Attorney Hendrickson stated that picking up keys and other equipment was clearly not the only activities which constituted work in Nevada, and picking up keys was not the only activity that could start a workday, and that the performance of any work task started a workday, such as being in the gatehouse for roll call 20 minutes before shift to complete activities for the benefit of their employer.

Attorney Hendrickson stated that the officers were required to be on the premises, on duty and to complete tasks for the benefit of the employer 20 minutes early, and that the officers did this every day.

Attorney Hendrickson argued that this was not part of the officers' commute, it was after they went through security, entered the facility, and were on premises performing tasks for the benefit of their employer. Thus, under either Nevada or Federal law the performance of those activities, in his opinion would constitute work, which should be compensated.

DAG Tan argued that the workday was defined by statute, and that the EMC could defer to that definition.

DAG Husbands argued that Attorney Hendrickson was prescribing a formality to the proceedings that the evidence did not support, and there was no formal meeting, muster or roll call that occurred.

Member Bauer stated that when she reviewed NRS 281.100, that statute specifically governed hours of service of employees of state and political subdivisions, she was wondering if that statute had a further role in the Grievances, as the statute was specifically intended to govern state employees.

Member Parker stated that it sounded like both facilities were able to track when equipment and keys were checked in and out, so it would not be hard for NDOC to identify specific times being discussed based on the officer assignment.

Chair Beigel stated that she was stuck on the Grievances, as in substance what they had done was too vague, and if the Grievances were to be denied in their entirety it did not seem right, but granting the Grievances in their entirety also did not seem right.

Member Parker agreed with Chair Beigel. She stated that if the EMC were going with NRS 281.100(2), when the officers took charge of any type of state issued equipment once they reported to work, then those would be the only officers who could be tracked, and then for only 20 days prior to the filing of the Grievances until present.

Chair Beigel stated it was 2.5 years.

Member Bauer asked since the event date of the Grievance did anyone know if Grievants were assigned to search and escort?

Officer Eckard stated that he was assigned to search and escort since the Grievance had been filed but was unsure of how many times he had been.

Officer Haines said he had also been assigned search and escort duty since his Grievances were filed but was unsure of how many times.

Member Bauer stated she sympathized with the Grievants. She stated that if the EMC were to grant the grievances in part based on verifiable shifts where the Grievants worked search and escort, that became complex because she wanted to make sure that Grievants were compensated appropriately, but that might need some collaboration by the employers.

Member Beigel asked the associate wardens if when officers were assigned to search and escort if that was notated in CHRONOS, so that a report could be ran showing when an officer were in search and escort?

A.W. Hartman stated that NDOC had such archives.

Member Bauer stated that the employer would need to bring forth that amount, that it had to be verified and that there must be a determination by the Governor's Finance Office that sufficient budget authority existed to pay the claims.

A.W. Hartman stated that going back to determine when officers worked in search and escort would be a labor intensive, time consuming process.

Member Thompson stated she wished she knew how many days each officer worked search and escort, as the information which the EMC had was limited, and wanted to be fair in deciding.

Member Thompson asked if the EMC could table the Grievances to get the dates from the agency in which the officers worked search and escort?

Chair Beigel stated that she was not sure that the EMC really needed that information in deciding.

Member Parker asked if the EMC was considering compensation only for search and escort or if the EMC was looking at other assignments that required the officers to pick up essential equipment, such as keys and radios?

Member Thompson stated that she thought if the officers had to pick up any equipment at all other than at their posts they should be compensated.

Member Bauer asked if a motion was not narrowed down to search and escort could the employer go back in the records and determine when any shift would have been that required equipment pick up other than at the assigned post?

Member Bauer asked A.W. Hartman if a search and escort shift required that the keys be picked up and if that was when the employee started work, how different was that from the scheduled shift?

A.W. Hartman stated he felt there was no difference, and that rather than say working in Unit 1, where an officer would pick up his keys and radio, and the officer was assigned to Unit 1, an officer then instead of picking up his or her keys and radio at a central control office area and then were on duty from that time, as an officers duty location could be all over the yard, but the officer was on duty at that moment, and that if that differed from the time an officer was scheduled that it was not required to differ.

Member Bauer stated she felt the same question should be asked of Grievants, and if one were looking at a search and escort post for a shift assignment, how different was it from the time an officer picked up keys and radio for search and escort than it would be from a regular shift?

Officer Haines replied that either way one looked it, no matter if an officer worked a unit or search and escort position, an officer still had to be there before the start of shift. If he showed up straight at 5:00 am, the start of his shift, and

the inmates left for culinary at 5:00 am, he would be unable to ensure that he had an accurate count of inmates.

Officer Haines asked, if he was required to check in with his sergeant, and failed to do so, and could be reprimanded for not doing so, but was not paid for checking in, could he still be reprimanded?

Officer Eckard also added that he had worked culinary post many times at HDSP which required pick up of keys from main control, after which he had to walk about 10 minutes to get to his assigned post.

Member Beigel asked EMC DAG Gardner how would other court decisions affect the EMC's decision here, and whether it had any bearing on what the EMC decided today?

EMC DAG Gardner stated that the EMC could make its decision like a court would, acting under its own authority, and that the EMC needed to follow binding law.

Member Bauer stated that it was her impression that the EMC's authority to decide cases fell under the Administrative Procedure Act.

Member Parker asked the EMC board members if they were thinking in line with NRS 281.100, maybe any position that required a check in or check out of any equipment would be eligible during those time frames?

Member Beigel stated that her thought would be considering when equipment was checked in or checked out not at the location where the officer ended up, but where one actually had to walk first to get the equipment, because if one went to an assignment and picked up their keys and checked them out upon arrival that did not really count.

Member Thompson stated that she agreed with both Member Parker and Chair Beigel.

Member Bauer stated that she was struggling with how to clearly delineate so that any potential disagreement between employer and employee could be mitigated with respect to coming up with an actual dollar amount.

Member Bauer stated that her concern was what days did grievants work qualifying shifts, and of those days how many minutes were qualified pursuant to any motion or any decision made today for compensation, and would the compensation be straight pay base pay or overtime?

Chair Beigel stated she thought that the compensation would be overtime.

Member Parker thought the EMC would need to match the payroll records with records showing the check in and check out of the equipment, so that it would not just be search and escort, it would be other duties that required officers to

pick up equipment somewhere else where they had to check it out and check it back in. There would be two sets of records that would confirm each other.

Chair Beigel asked Member Bauer why she thought the pay in question may not be overtime?

Member Bauer responded that she was thinking that someone would need to verify if the pay in question would be overtime, and then someone would need to make sure there were no disqualifying events that did not preclude 40 hours, and that this would be quite a task for Grievants and the employer to determine.

DAG Husbands stated that such a task would be multifaceted, and involve at looking what the officer was doing, and did the task require the checkout of equipment, when was it checked out, and would the time spent with the equipment qualify the officer for overtime in the given pay period?

A.W. Hartman stated that he was guessing NDOC would need to know the exact time the officer checked out equipment, and what time it was turned in, and that he could not with certainty say if that could possibly be done, and that someone would need to be on that project full time for two months if that were to be done.

Chair Beigel asked if the EMC used an average number of minutes, could they say that the officer received 30 minutes of overtime that day the officer checked out equipment, and if that made sense?

Member Parker asked if they were talking about identifying 20 working days for three different incidents, would that really take a long time?

Chair Beigel pointed out that the EMC had to go back 20 working days before the Grievance was filed up until the day of the hearing.

Member Thompson felt that the EMC did not need to know exactly how many minutes the officers worked for each shift or each position, and that the EMC just needed to know that the officer worked that day, and the officer would receive whatever time the EMC thought was fair.

Member Parker asked about tabling the Grievance to have NDOC come back with time calculations.

Chair Beigel stated that she did not want to table the Grievances at that time.

Member Bauer asked if the EMC was leaning towards a motion that would clearly delineate which post grievants worked which would be a qualifying event for a number the EMC chose in overtime.

Chair Beigel stated she was leaning in that direction.

Member Bauer stated that it was her understanding that the testimony was that a custody officer would check out or be given keys and a radio, regardless of whether the officers obtained it at the central command area of their assigned post or whether they received them in an administrative building, which could be a 7 minute walk away from their duty post.

Member Bauer stated that she was still concerned about a motion being ambiguous, though.

Member Thompson suggested instead of using keys and radio why not say equipment.

Member Bauer agreed that could be done.

DAG Husbands stated the equipment might become ambiguous, while saying keys and radio would not be.

Member Thompson stated she was concerned with limiting the term, as testimony had brought forth other equipment being involved, such as officers picking up batteries.

Member Bauer stated she shared Member Thompson's concern, but thought that the battery being picked up was prior to the grievance date.

A.W. Hartman suggested the use of the term "institutionally issued equipment," in case a situation was missed where equipment was picked up away from the officer's duty station.

Member Bauer asked if "institutionally issued" would also cover equipment such as batons, which the officers always had with them?

A.W. Hartman stated that such equipment probably would be covered under such a definition and suggested using a term such as institutional equipment issued at the beginning of shift and returned at the end of shift.

Officer Eckard and Officer Haynes both stated that they had signed a variable work week agreement for 40 hours.

Member Bauer motioned that for any assigned post that required institutional equipment be issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post, The Grievant shall be retroactively compensated to_____. Retroactive compensation shall be at the then base rate of pay or overtime rate of pay based on eligibility per hours worked in that 40-hour time.

Member Thompson made suggested changes concerning Member Bauer's motion before it was seconded.

Attorney Hendrickson stated that he agreed with DAG Husbands in that he believed that the award should be tied to work actually performed, with the caveat that it should include all work, including the work that was performed on days that did not involve picking up keys.

Member Bauer stated that she had a concern that the Director of the Governor's Finance Office was fiscally conservative, and that she would question the 30 minutes, and asked if the EMC was making a potential overreach.

DAG Husbands stated concern about the accuracy of the information, and that if the officers were performing a basic half hour per shift worked when the officers did have to pick up equipment from outside the duty station there was a risk on the employee's side that there might be potential undercutting of the time the employees had put in, and that on the employer side he thought that there was a risk that the State would be paying quite a bit more than would be compensable, but that he was sensitive to time being an issue.

DAG Husbands stated that it was unknown what extent of information was really being looked at, such as how many shifts were implicated, how many days were in question, how much time, where the information was stored, and how easily accessible the information was, so that the matter was a bit of a challenge.

Member Bauer stated that based on previous hearings she remembered there was testimony about logbooks and manual processes, her concern was that even with an automated agency the calculations would take a significant amount of time.

Member Bauer stated she was concerned that NDOC would have to take a significant amount of time, but would not want the Grievants to be undercompensated, but would not want NDOC to overcompensate, and asked what it would look like if the EMC returned after 30 days after determining the amount of time and effort it would take from NDOC to make the necessary calculations.

DAG Gardner stated in responding also opined that a hearing might be needed to precisely determine the amount of time the employees would be compensated at.

Member Parker stated that one of the concerns she heard was what was the justification for the 30 minutes when there was a difference in the distance the officers went for picking up the keys.

Chair Beigel agreed with Member Parker and said that her proposed changes would result in a more generic motion that was "out of the weeds."

Chair Beigel stated that the proposed motion was similar to what the EMC had done in Prost, finding that compensable time was required for posts that required that institutional equipment be issued at the beginning of a shift and returned at the end of a shift other than to the assigned post, and that decision was pursuant to NRS 281.100(2), and that the grievant should receive payment for such

compensable time, beginning 20 working days prior to the event date of the grievance forward.

Member Bauer still had concerns for the employer and grievants that the lack of clarity offered no remedy, and stated that if the EMC did not make the decision clear, and there was disagreement between the parties, what would the process look like?

DAG Gardner stated he thought that the proposed motion was fine it left out what the calculation of what the grievance was, which was ambiguous, and that the parties would have to decide what the actual dollar amount was with some guidance but not a lot of guidance.

Member Parker thought that there was no way around the matter other than basing the decision on documentation on when the officers checked in and checked out the specified equipment.

Member Beigel expressed concern that the amount of time and money to determine the amount of compensation owed to officers might be very high considering the amount owed, or that NDOC might not have the records to even make the calculations.

Member Parker stated that she agreed with adding the actual minutes per qualifying shift language, but thought that the motion needed to be more specific, and that while she emphasized with NDOC for having to perform the calculations to determine the amount of compensation owed that fact should not influence the EMC's decision.

Member Bauer said she was looking for the event date of grievance #5908.

Member Bauer stated that she had August 26, 2018.

Member Bauer made a motion to deny in part and grant in part pursuant to NRS 281.100 Grievances #5908, #6050, and #6123 for any assigned post that requires institutional equipment issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post. The Grievants shall be retroactively compensated to August 26, 2018. Compensation shall be at the actual minutes per qualifying shift multiplied by the applicable base rate of pay or overtime rate of pay based on eligibility per hours worked in that 40-hour work week. Grievance #5908, #6050, and #6123 is denied for all other shifts that do not require institutional equipment issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post.

Chair Beigel suggested adding 20 working days prior to August 26, 2020 to her motion.

Member Bauer stated that in the Butler and Jones grievances it was noted that the EMC could only award damages back to the event date of the grievance.

Chair Beigel asked for voting on the motion set by Member Bauer.

Member Thompson seconded the motion.

Chair Beigel stated the motion carried unanimously. Grievance's #5908, #6050 and #6123 were considered separately.

Member Parker stated that the grievances were 20 days apart, so would not the EMC go retroactive to the first event date of the 11/7/18, and then go forward to cover the 11/27/18 date?

DAG Gardner stated that Grievance's #5908, #6050 and #6123 involved the same exact concerns, so that doing a motion and choosing the earlier of the two dates made sense.

Member Bauer motioned to deny in part and grant in part grievances #5908, #6050 and #6123 pursuant to NRS 281.100. For any assigned post that requires institutional equipment issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post, Grievant shall be retroactively compensated to November 7, 2018. Compensation shall be at the actual minutes per qualifying shift multiplied by the applicable base rate of pay or overtime rate of pay based on eligibility for hours worked in that 40-hour work week. Grievances #5908, #6050 and #6123 are denied for all other shifts that do not require institutional equipment issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post.

Member Parker seconded the motion.

Chair Beigel asked the board members for their votes to the motion.

Chair Beigel stated the motion carried unanimously.

CONCLUSIONS OF LAW

1. For these Grievances, #5908, #6050, and #6123 it was Grievant's burden to establish by a preponderance of the evidence that NDOC was required to them for pre and post shift activities Grievant's performed at HDSP back to August 26, 2018, until the date of their grievance hearing, on February 4, 2021.
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. NRS 281.100 states in relevant part that:

NRS 281.100 Hours of service of employees of State and political subdivisions; exceptions; penalty.

1. Except as otherwise provided in this section and [NRS 284.180](#), the services and employment of all persons who are employed by the State of Nevada, or by any county, city, town, township or other political subdivision thereof, are limited to not more than 8 hours in any 1 calendar day and not more than 40 hours in any 1 week.
2. The period of daily employment mentioned in this section commences from the time the employee takes charge of any equipment of the employer or acts as an assistant or helper to a person who is in charge of any equipment of the employer, or enters upon or into any conveyance of or operated by or for the employer at any camp or living quarters provided by the employer for the transportation of employees to the place of work.
4. The Grievant's, when they are working search and escort duty, at the beginning of their shift, took charge of keys and radio, at a location other than their assigned post, and returned the keys and radio to a location other than their assigned post at the end of their shift.
5. Thus, Pursuant to NRS 281.100(2), The Grievant's took charge of the equipment and thus began their daily employment with NDOC. The Grievant's workday ended when they returned that equipment to a location other than their post when their shift ended.
6. All other shifts that do not require institutional equipment be issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post do not fall within NRS 281.100 as commencing the period of daily employment, and are therefore denied.

DECISION

Grievance's #5908, #6050, and #6123 is granted in part and denied in part pursuant to NRS 281.100. For any assigned post that requires institutional equipment issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post, The Grievant's shall be retroactively compensated to August 26, 2018. Compensation shall be at the actual minutes per qualifying shift multiplied by the applicable base rate of pay or overtime rate of pay based on eligibility for hours worked in that 40-hour work week.

Grievance's #5908, #6050, and #6123 is DENIED for all other shifts that do not require institutional equipment issued at the beginning of a shift and returned at the end of a shift at a location other than the assigned post.