



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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**Meeting Minutes of the Employee-Management Committee
Date: April 08, 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
Ms. Mechelle Merrill	
Ms. Mary Jo Scott	
Ms. Sandy Geyer	
Ms. Christina Leathers	

Employee Representatives

Mr. Tracy DuPree	X
Mr. Gwyn Davies	X
Ms. Sherri Thompson	
Ms. Sonja Whitten	
Ms. Turessa Russell	
Ms. Stephanie Parker	

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 10:00 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 Beigel opened the meeting with Committee introductions.

4. Adoption of the Agenda – Action Item

Chair Beigel stated Grievance #6688 for Jennifer Nash, and #6748 for Detelin Georgiev items that were listed on the agenda were withdrawn prior to the start of the hearing.

Chair Beigel stated for the record since the two Grievances were withdrawn from the agenda, the EMC would move to hear Grievance #6937 for Micaela Garofalo.

Chair Beigel requested a motion to adopt the agenda excluding the removed Grievances.

MOTION: To adopt the agenda.

BY: Member DuPree

SECOND: Member Bauer

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

5. Discussion and possible action related to Grievance #6937 Micaela Garofalo, Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee¹ (“EMC”) on April 8, 2021 pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance #6937, filed by State of Nevada, Department of Corrections Psychologist III (“Grievant” or “Ms. Garofalo” or “Dr. Garofalo”). Grievant was represented by Attorney William J. Geddes, Esq (“Mr. Geddes”). The agency-employer, the State of Nevada, Department of Corrections (“NDOC”), was represented by Senior Deputy Attorney General Kevin Pick (“Mr. Pick”). As an initial matter Mr. Pick brought up the fact that the Grievance hearing packets,

¹ The Committee members present representing a quorum were: Pauline Beigel (NDOT), who chaired the meeting; Jennifer Bauer (SPCSA), Tracy DuPree (DETR) and Gwyn Davies (DMV). Counsel for the EMC, Deputy Attorney General Robert A. Whitney, Breece Flores, EMC Coordinator, and Ivory Wright, EMC Administrative Clerk, were also present.

and the Grievance hearing would contain information made confidential pursuant to NAC 284.718.

Chair Beigel determined that the Grievance packets would be accepted as submitted, and that the Grievance hearing would proceed as an open hearing.

Grievant, Dr. Sonnette Caldwell-Barr (“Ms. Caldwell-Barr”), Senior Correctional Officer Robert Ashcraft (“Mr. Ashcraft”), Dr. David Green (“Mr. Green”) and Dr. Laurie Hoover (“Ms. Hoover”) were sworn in and testified at the hearing.

Mr. Pick stated NDOC objected and argued that the Grievant should not be allowed to raise arguments outside of issues raised in the four corners of the Grievance, and that Grievant had raised for the first time the argument of policy that came into existence by widespread practice in her pre-hearing statement.

Mr. Pick argued in substance, the EMC lacked jurisdiction to consider this argument not contained in Ms. Garofalo’s Grievance.

Mr. Geddes responded in substance that NDOC’s arguments lacked merit, and that any matters raised in Grievant’s pre-hearing statement clearly embraced the arguments/ideas set forth in Ms. Garofalo’s original Grievance.

Chair Beigel stated the objection was overruled.

Ms. Garofalo stated her written reprimand should be dismissed, as in reality she had only congratulated a staff member on a promotion prior to the formal announcement of the promotion. She argued such an action was not a disciplinary matter at NDOC, as such actions happened there all the time, and even Mr. Green and Ms. Hoover had engaged in these actions previously, and that these facts went to the questions of whether there was indeed an AR or instruction that was violated by Ms. Garofalo.

Ms. Garofalo argued that the NDOC training material was at odds with the reprimand, as the training material in substance indicated that a job candidate could be told of his or her selection prior to the formal offer from NDOC being sent out via mail.

Mr. Geddes argued that the claimed instruction from Ms. Hoover in her email was no instruction at all, and Ms. Hoover had said in her email that it was no secret at all who was selected, and there was no instruction by her to keep the matter a secret, and that the applicant had in fact already been selected.

Mr. Geddes argued that AR 300.05 had been misapplied by NDOC, and that Ms. Garofalo in no way offered a job to the applicant, and that Ms. Garofalo had merely congratulated the applicant on her promotion.

Mr. Geddes argued in substance that personal animus existed at the time between Ms. Hoover and Ms. Garofalo that led to the written reprimand that was the subject of Ms. Garofalo's Grievance, and that the written reprimand needed to be removed from grievant's file.

Mr. Pick argued that NDOC interviewed the applicant, Ms. Serrano, on September 19, 2019, and that on October 2, 2019. He stated Ms. Hoover had sent Ms. Garofalo an email stating that there was a clear leader, but that the selection was not official until the applicant was offered and accepted the position pursuant to Human Resources ("HR") policy. He stated several days later Ms. Garofalo announced that Ms. Serrano had been selected at a time when Ms. Serrano had not yet been offered or accepted the position.

Mr. Pick stated, NDOC issued Ms. Garofalo a written reprimand for insubordination, and that a written reprimand was the lowest form of discipline allowed for insubordination, nor was progressive discipline necessary in situations involving serious violations.

Mr. Pick stated in substance that any arguments made by Ms. Garofalo concerning prior discipline were irrelevant, as the instant situation was treated like a first-time violation by Ms. Garofalo.

Mr. Pick stated additionally, it was further noted that Ms. Garofalo's actions had went directly against her supervisor's directions and AR 300.05, and that any argument that NDOC was inconsistent in its application of discipline was utter speculation and ignored the fact that it was undisputed that Ms. Garofalo admitted committing the conduct in question.

Mr. Pick stated, Ms. Garofalo jumped the gun and announced the promotion before the position offer was accepted by Ms. Serrano and before Human Resources had even finalized the position, and after she had said there was nothing official with respect to the job offer yet.

Mr. Pick stated, it was irrelevant what any prior practice might have been in view of Ms. Hoover's email direction from October 2, 2019, to Ms. Garofalo.

Ms. Garofalo testified that on October 10, 2019 at a staff meeting she was merely congratulating Ms. Serrano for her promotion to the Psychologist II position which she had received, and that in her mind she was not making any kind of official offer to Ms. Serrano.

Ms. Garofalo stated that she had been on the interviewing committee, and that Ms. Serrano had performed very well at her interview.

Ms. Garofalo stated that Ms. Hoover had been her Supervisor at the time the interview took place, and that she had also been on the interviewing panel. She stated in looking at the first page of the written reprimand, it was her recollection that Ms. Serrano had scored highest among the applicants, and she had never heard of anyone at NDOC being written up for offering informal congratulations to an employee prior to Human Resources finalizing the process.

Ms. Garofalo stated with respect to the words “there was no secret” in Ms. Hoover’s email to her, she stated that it was her understanding that it was not a secret that Ms. Serrano had been chosen for the position. With respect to her writing that the selection was not official until the individual was offered and accepted the position per Human Resources policy, and she saying it was no secret.

Ms. Garofalo stated that she believed that the position would be offered to Ms. Serrano, and that she would accept the position.

Mr. Geddes questioned Ms. Garofalo in looking at Ms. Hoover’s statement in exhibit 1, concerning providing her with the name that was forwarded, and her email response on October 2, 2019, he questioned whether or not she thought it was ok to congratulate Ms. Serrano for the promotion.

Mr. Pick objected to the question as outside the scope of the Grievance, as it was going towards whether a violation happened, and whether Ms. Garofalo knew what she was doing or intended what she as doing would be insubordinate to supervisor instructions, which was not within the scope of the Grievance, and was not put forth in the four corners of the Grievance as set forth by Ms. Garofalo, and that the NAC required arguments be set forth in the Grievance.

Mr. Pick added that new arguments that were not contained in the Grievance were waived, and time barred as could not be introduced at that time, and so there was an objection to the line of questions as to whether a violation had happened.

Mr. Geddes argued that if no violation had occurred then everything was done, and that whether a violation occurred was the core of Ms. Garofalo’s right of defense.

Mr. Geddes stated the fact was not whether Ms. Garofalo made a certain statement, but whether or not the making of that statement constituted a violation or an act of insubordination, and so if they were precluded from introducing evidence of that matter there was no point to the hearing, as Ms. Garofalo would not receive a fair hearing.

Mr. Pick responded it was not prejudicial because the matter was not contained in the Grievance, and it was a matter of jurisdiction, that Ms. Garofalo had 20 days to lodge a Grievance on matters she wished to object to in the written reprimand, and this was not an issue that had been objected to.

Mr. Pick noted that Ms. Garofalo was present to adjust a Grievance which had been filed by Ms. Garofalo, and the EMC's jurisdiction was limited to what was in the Grievance, and that the EMC was here to address the Grievance, and what was not in the Grievance the EMC had no jurisdiction over.

Mr. Geddes stated that if the EMC did not have jurisdiction to hear whether a violation occurred, then he would say the NDOC does not have any jurisdiction to even issue the reprimand, and that Ms. Garofalo challenged the issue when she said "what are you talking about," and "why am I being written up for this, this is what everyone does, this is not a violation."

Mr. Geddes further stated it was creative administration to create a technical violation that did not even exist.

Mr. Geddes argued it was within the EMC's jurisdiction to determine whether a disciplinary matter was valid, and the question went to the core of the charge and that was never waived, and that there was jurisdiction to determine whether Ms. Garofalo violated the AR and was insubordinate.

Chair Beigel stated the objection was overruled.

Ms. Garofalo responded to Mr. Geddes question that she thought it was ok, and that she did not see Ms. Hoover's email as direction for her not to say anything about the promotion, so in her mind she was not doing anything insubordinate.

Ms. Garofalo further stated that it was a common practice at NDOC to informally congratulate employees being promoted before official notice was made by Human Resources, and that this happened all the time.

Ms. Garofalo stated in looking at exhibit two of the Grievance paragraph four, it was pointed out that she raised the argument that it was common practice at NDOC and her department to inform staff of promotions and selections ahead of the mailed letters from Human Resources being sent.

Ms. Garofalo stated in turning to exhibit four of the employee's packet materials, which was the training material that supervisors are mandated to go through each year on interviewing and hiring, she stated that the material made her think it was ok to notify an employee of his or her promotion prior to Human Resources notification because of what was

said in the third paragraph of the material. She said that paragraph said that the candidate may receive phone calls from them prior to the letter from Human Resources being sent to the candidate.

Ms. Garofalo stated that the training material was online and was more evidence of what was done at NDOC all the time.

Ms. Garofalo further stated that it was her understanding that she was trained to contact a selected candidate in the manner outlined in the training material.

Ms. Garofalo testified with respect to the email from Ms. Hoover, that she never had an intent to disregard any instruction concerning early congratulations to Ms. Serrano and had not seen anything in the email which was any kind of instruction not to say anything to Ms. Serrano.

Ms. Garofalo stated that had Ms. Hoover specifically asked her not to tell anyone she would have done so.

Ms. Garofalo stated that she knew Ms. Coleman, who was Mr. Green's Administrative Assistant, and that she had announced her promotion in her email signature line prior to the official announcement of Ms. Coleman's promotion, and that she had been leaked the information from someone prior to Human Resources wrapping up her promotion.

Ms. Garofalo noted that Ms. Coleman's interview took place October 16, 2019, and within days, Ms. Coleman had changed her signature line, but even prior to that event Ms. Garofalo said at a warden's meeting a warden in substance announced Ms. Coleman's promotion, which indicated to Ms. Garofalo that Ms. Coleman had been told right away that she had received the promotion, and that the official announcement did not come out until much later.

Ms. Garofalo stated that at present she had a good working relationship with Ms. Hoover, and that relations between the two had improved since the reprimand was issued.

Ms. Garofalo stated when the written reprimand was issued their working relationship was "not very good."

Mr. Geddes asked Ms. Garofalo what her opinion was as to why she was written up in the subject reprimand.

Mr. Pick objected for speculation.

Mr. Geddes responded that he was not asking Ms. Garofalo for what actually was, he was asking her for her opinion.

Chair Beigel stated the objection was overruled.

Ms. Garofalo stated that she believed the reprimand was retaliatory.

Mr. Geddes asked Ms. Garofalo about her relationship with NDOC prior to Ms. Garofalo withdrawing her EEOC complaint, and calls made to gather negative information on her.

Mr. Pick objected for relevancy.

Chair Beigel stated his objection was sustained.

Ms. Garofalo explained in looking at exhibit 1 (the written reprimand), section D on page two, that the April 24, 2019 a written reprimand had been turned into an LOI after she challenged the reprimand.

Ms. Garofalo stated in substance it was her understanding she had no prior disciplinary history prior to the November 11, 2019 written reprimand.

Ms. Garofalo stated in looking at page five of her Grievance, step two, Mr. Green's response was, that she could not remember if she had communication with Human Resources to remove the April 2019 written reprimand from her file.

Ms. Garofalo testified on cross examination, that she publicly congratulated at a staff meeting on October 10, 2019 Ms. Serrano on her promotion, and that she believed NDOC was going to offer Ms. Serrano the position. With respect to whether she was aware at the time she made the statement that NDOC had not offered Ms. Serrano the position.

Ms. Garofalo stated it was her understanding that the appointing authority had already signed off on it, but that Ms. Serrano had not yet been officially offered the position.

Ms. Garofalo also stated that at the time she made her statement Ms. Serrano had not yet accepted the position.

Ms. Garofalo further testified that Ms. Hoover never came to her and said that she was authorized to make the statement at the October 10 staff meeting.

Ms. Garofalo further stated that Mr. Green never authorized her to make the announcement concerning Ms. Serrano's promotion at the October 10, 2019 staff meeting, nor had Human Resources or Warden Williams.

Ms. Garofalo testified that she had not been involved in the Coleman recruitment process, and was not copied on communications between Human Resources and Ms. Coleman, and so she had no first-hand knowledge as to when Ms. Coleman was offered the AA position, but knew mail did not work that fast, and that it was impossible for the

notification letter to have went through the mail and reached Ms. Coleman in time for her to already have knowledge of her official promotion when she changed her title.

Mr. Pick again asked Ms. Garofalo if her testimony was not simply based on her general understanding of the mail, and that she had no first-hand knowledge of what happened when regarding Ms. Coleman.

Mr. Geddes objected to as misstating testimony and asked and answered.

Mr. Pick responded that the question had never been answered.

Mr. Pick clarified his question that Ms. Garofalo did not have first-hand knowledge of how the mail system worked.

Mr. Geddes responded by stating that Ms. Garofalo had testified to her understanding as to how the mail worked at NDOC, which was valid evidence, and that Ms. Garofalo can apply her knowledge as to how matters work at NDOC, internal mail, etc., to inform her opinion.

Mr. Pick stated that he was not asking that any testimony be stricken or disallowed but wanted to get an answer on whether Ms. Garofalo had first-hand knowledge on when things happened in the recruitment process with Ms. Serrano.

Chair Beigel stated the objection was overruled, as Ms. Garofalo had not actually answered Mr. Pick 's question.

Ms. Garofalo stated that she did not have first-hand knowledge on the communications between Human Resources or NDOC management and Ms. Coleman regarding her recruitment for the AA III position.

Ms. Garofalo testified that the meeting where Warden Williams disclosed Ms. Coleman's promotion was prior to the official announcement of Ms. Coleman's promotion.

Ms. Garofalo also testified that she did not believe that specific authorization from these individuals was required to congratulate Ms. Serrano.

Ms. Garofalo explained that the letters Human Resources sent out, the official letters announcing the person's promotion, tended to take months to arrive, so generally the person was given advance notice that he or she had been selected, and the paperwork followed, and that nothing was official until everything was done, such as the background check, and people may be working in the position before any of that happened, and that the process was long term. So, having interviewed on a Thursday, and then the following Monday morning, Ms. Coleman was already in the position, meant that Ms. Coleman had to have been told by someone

she had received the position, and was discussed so openly that even Warden Williams was aware of it, and that such discussion was common practice.

Member Bauer questioned Ms. Garofalo about specific permission not being provided by certain individuals, and asked if Ms. Hoover, Mr. Green, Human Resources or Warden Williams specifically directed her not to discuss the promotion at any time.

Ms. Garofalo responded, “no they did not.”

Member Bauer asked Ms. Garofalo if she was aware of a policy that prohibited discussing a promotion before it was officially announced by Human Resources or the appointing authority.

Ms. Garofalo responded that she was not aware of such a policy.

Mr. Ashcraft testified that he had worked for NDOC for almost 22 years and was a senior correctional officer at High Desert State Prison.

Mr. Ashcraft testified that he knew Officer Finley, who was a senior correctional officer at High Desert State Prison who had recently been promoted to sergeant and prior to Officer Finley’s promotion, it was Mr. Ashcraft’s understanding that Officer Finley learned that he was selected for the promotion before he was officially offered the position.

Mr. Ashcraft’s stated his understanding that Officer Finley gained that knowledge because someone leaked this information to him before Human Resources officially made an announcement of promotion, and that the leak would have been from a supervisory level.

Mr. Geddes asked why the leak would have come from a supervisory level.

Mr. Pick objected saying that there seemed to be an insufficient basis of information that was laid to get around the fact that the question was very much speculative, and if it was speculative was not relevant, and it was clear that Mr. Ashcraft did not know who had leaked the information, or when it was leaked, so additional lines of question on this, when the basis of understanding and foundation had not been laid as to what his knowledge was would be speculative and not relevant based on that.

Mr. Geddes responded that the testimony offered was that Officer Finley had heard he was being promoted before he was officially promoted, and if that was not enough of a foundation, he was happy to lay more.

Chair Beigel stated the objection was sustained.

Chair Beigel stated that things seemed to be getting repetitive.

Mr. Geddes responded that as to the repetitiveness, Mr. Pick had interposed objections to the competency of Ms. Garofalo's testimony and knowledge as to when Ms. Coleman was offered a position, and Mr. Ashcraft's testimony was vital because it would show that the practice of congratulating employees prior to official announcement by Human Resources was widespread.

Mr. Geddes asked Mr. Ashcraft if he was aware of how Officer Finley's promotion worked at the NDOC.

Mr. Ashcraft responded that a person applied for a position, that NDOC had to pick 5 applicants from the top 10 people selected, and then interviewed those 5 people.

Mr. Ashcraft understood the interviews to be on a point system, and if a person scored the highest points for the position, they were offered it.

Mr. Ashcraft also stated that he could not guarantee that the information concerning Officer Finley's promotion had been leaked to him, although obviously he had heard of his promotion, but had not yet received the proper documentation.

Mr. Ashcraft was asked about Mr. Hankart, who was another senior correctional officer who worked at High Desert State Prison who was promoted to sergeant at the same time as Officer Finley.

Ms. Leathers stated from NDOC that she was uncomfortable with speaking about employees, their promotions and their recruitments who were not present or aware that their information was being discussed in a public hearing.

Chair Beigel responded in substance that Ms. Leathers was not part of the hearing, and that Mr. Pick could respond, and that she was unsure if the NDOC employees in question had been told their information would be presented or not.

Mr. Pick stated that early on that day before testimony began when evidence was being discussed he raised an objection that they would likely hear confidential information, and now were hearing additional confidential information as to the recruitment of various officers at High Desert State Prison, a ruling was made on his objection earlier.

Mr. Pick stated he understood that the EMC could seek confidential information, but that the hearing would involve confidential information, which was why he raised the issue of the meeting needing to be closed to the public earlier.

Chair Beigel responded by stating someone getting a promotion was not confidential, because the person's job title would change and be noted, and that employees could publicly be looked up in public records, so as soon as an employee received a promotion and his or her job title changed it was not confidential, and her understanding was we were talking about employees who had already been promoted, and those were public records, where the employees' names could be searched and information about promotions disclosed.

Chair Beigel understood they were not covering confidential information, they did not disclose who else was on the list, how many people were interviewed, and who was selected, and the only thing she was hearing was those two people were selected.

Chair Beigel asked Mr. Geddes not to use any more names and use generalities instead.

Mr. Geddes responded, and indicated that he had a total of four witnesses who had received promotions and been informed of that fact before the promotion was official.

Mr. Pick objected that what Mr. Geddes had proposed was the definition of repetitive testimony.

Mr. Geddes responded that the testimony was not repetitive when the validity of Ms. Garofalo's position was being attacked, and that four witnesses was sufficient to establish the validity of a widespread practice at NDOC.

Chair Beigel ruled that two witnesses were sufficient, and that the testimony was becoming repetitive, but that it would be put on the record that Mr. Geddes had additional names which could be supplied.

Mr. Ashcraft testified that there were other instances where he had congratulated informally an NDOC employee on a promotion before that employee received official notice from Human Resources of the promotion, and added that it was probably more uncommon not to know of a promotion, as one just had to wait for the final offer.

Mr. Ashcraft estimated that he was personally involved in more than four instances where he gave unofficial congratulations to a promoted employee before the employee was officially promoted at the NDOC. With respect to other people offering prior congratulations to an employee before his or her official promotion.

Mr. Ashcraft testified that he had witnessed multiple people knowing who received a promotion before official notification.

Mr. Ashcraft also testified that he was never disciplined for prematurely congratulating other employees upon their promotion.

Mr. Ashcraft stated that he was not involved in the October 2019 recruitment of the Psychologist II at High Desert State Prison, nor did he sit on the interview committee, and was not copied on communications between Human Resources and applicants.

Mr. Ashcraft also stated that he was not present at the staff meeting where Ms. Garofalo announced the promotion of her co-worker Ms. Serrano.

Mr. Pick asked Mr. Ashcraft whether he had first-hand information on any of the events pertinent to Ms. Garofalo committing the violations.

Mr. Geddes objected for misstating testimony.

Mr. Pick rephrased his question and asked Mr. Ashcraft if he had first-hand knowledge on what Ms. Garofalo had been told by supervisors prior to her statement.

Mr. Ashcraft responded “no”.

Mr. Ashcraft stated that he had no first-hand knowledge of the status of the recruitments when Ms. Garofalo made her statements.

Mr. Ashcraft also testified that he did not know who in Human Resources talked to Officer Finley about his promotion, and that he did not know for certain if it was someone from Human Resources.

Mr. Geddes objected for misstating testimony, later clarified to assuming facts not in evidence.

Mr. Ashcraft had answered Mr. Pick ’s question.

Chair Beigel stated that there was no need for a decision on the objection.

Mr. Ashcraft further testified that he did not know who or when someone spoke to Officer Finley about his promotion.

Mr. Ashcraft stated that he knew of no other instances of an employee congratulating a fellow employee on a promotion prior to paperwork going out where a supervisor had just warned the person who was making the announcement “No the selection is not official until the individual is offered and accepted the position per Human Resources policy.”

Member Davies asked Mr. Ashcraft if the congratulations which he was referring to was in a formal setting or was just two persons meeting in a hallway.

Mr. Ashcraft stated it would be like persons passing in a hallway.

Ms. Caldwell-Barr stated that she was a Psychologist III Supervisor in Mental Health at NDOC, she had worked for NODC for 7 years, and that she knew Mr. Green.

Ms. Caldwell-Barr stated she had a supervisory role. She was at a July 29, 2020 supervisory meeting with Mr. Green, and that such meetings were held most Wednesdays.

Ms. Caldwell-Barr stated in substance that Mr. Green made a statement at that meeting which led her to believe that it was ok for her to let an applicant know that he or she had been selected for a position prior to official notification being made by the Human Resources.

Ms. Caldwell-Barr explained that she had interviewed applicants for an AA I position, and Human Resources were dragging its heels and had made no offer.

Ms. Caldwell-Barr expressed her concerns about losing a particular candidate she wanted for the position, and Mr. Green said it was ok for her to let the candidate know that she was the one they were interested in and to see if the candidate was still interested in the position.

Ms. Caldwell-Barr stated she took away from what Mr. Green said was that it was ok to formally congratulate people who were being promoted prior to official word being sent out by Human Resources.

Ms. Caldwell-Barr testified that she shared at the meeting that she did not know they were allowed to offer candidates a position before Human Resources offered them, and Mr. Green said “no, no, you can do it,” or a response along that line.

Ms. Caldwell-Barr stated that at the July 19, 2020 supervisor’s meeting that Mr. Green did not say that disregarding supervisor instruction was not a violation of NDOC policy.

Ms. Caldwell-Barr further stated in substance that Mr. Green did not state that making an unauthorized representation on behalf of NDOC was not a violation of NDOC policy.

Mr. Pick asked Ms. Caldwell-Barr if Mr. Green authorized her to make the communication with the specific applicant.

Ms. Caldwell-Barr responded that she did not see it as an authorization, but as for supervisors it was ok to do that, which was confusing to her.

Ms. Caldwell-Barr stated that she said to Mr. Green that she did not think they could contact any of the applicants. Mr. Green had told her that they could contact the applicants.

Ms. Caldwell-Barr elaborated and said that Mr. Green had told her she could call the candidate and speak with her and let her know she was the candidate that she wanted and ask her if she was still interested, or that was the gist of it.

Ms. Caldwell-Barr stated that she was familiar with Ms. Garofalo's reprimand, and that her confusion was based on the write up Ms. Garofalo had received.

Ms. Hoover stated that she was the Psychologist IV for the Southern Region of NDOC.

Ms. Hoover stated that she had been with NDOC since 1996, and as a Psychologist IV she Supervised Psychologist III's and oversaw mental health programs at the southern facilities of NDOC, which included High Desert State Prison .

Ms. Hoover indicated that she was Ms. Garofalo's immediate supervisor.

Ms. Hoover stated that in her role of hiring new employees she often submitted the new staffing requisitions, and that once applications were received, she would participate in reviewing the applications, and as needed, in the interview process.

Ms. Hoover stated once the hiring packet was complete, that she would participate in signing the appropriate papers, after which the packet was sent to Human Resources for their review and processing.

Ms. Hoover stated that the process was generally the same for internal applicants.

Ms. Hoover stated that she was familiar with NDOC prohibitions and penalties, and in looking at Employer Exhibit H (NDOC's Prohibitions and Penalties).

Ms. Hoover testified that she had previously been involved in issuing letters of instructions, written reprimands to employees, and also in issuing suspensions and terminations.

Ms. Hoover stated that she was familiar with AR 300 and its regulations dealing with recruitment and hiring, and she was familiar with the

November 2019 written reprimand issued to Ms. Garofalo, as she wrote it, and she was familiar with Ms. Garofalo's Grievance.

Ms. Hoover testified that she had prepared step one in Ms. Garofalo's Grievance.

Ms. Hoover stated that the violations at issue in the written reprimand were NAC 284.742, Prohibitions and Penalties, (L), Insubordination, Number 1, disobeying or refusing to obey a statute, state regulation, agency policy, written or verbal instruction, lawful order, (L)(7), Unauthorized representation of the agency, and NAC 284.650(6), insubordination or willful disobedience.

Ms. Hoover stated in looking at exhibit H, page one, noted that the 5 different types of corrective action were on that page. In turning to page 6 of exhibit H, it was noted that minimum level of discipline for a violation of NDOC P & P L(1) was a written reprimand, and so the written reprimand Ms. Garofalo received was the lowest form of discipline she could have received for her alleged violation, and that an oral warning was not allowed by the P & P's for such a violation. The maximum level of discipline, according to Ms. Hoover, for Ms. Garofalo's alleged violation was dismissal.

Ms. Hoover further stated that the minimum level of discipline for a violation of (L)(7) was a written reprimand, and that an oral warning was not allowed to be issued for such a violation, and that the maximum penalty allowed for such a violation was dismissal. With respect to the alleged denial of the right to be represented when served with a written reprimand.

Ms. Hoover was asked if she was familiar with NDOC AR 342.

Ms. Hoover responded that she was, and that under that section an employee did not have the right to representation when being served with a written reprimand, and that it was not an investigatory interview when Ms. Garofalo was served with the reprimand, nor was it a pre-disciplinary hearing, or an appeal hearing. With respect to an April 2019 written reprimand being included in the prior discipline section of the November 2019 written reprimand.

Ms. Hoover testified that the lowest level of discipline that Ms. Garofalo could have received for the violations set out in the November 2019 written reprimand was a written reprimand, and that the minimum level of discipline for a second violation was suspension, and Ms. Garofalo was not suspended in this situation, so the November 2019 written reprimand was treated as a first time violation. With respect to any selective enforcement by NDOC of the policy that Ms. Garofalo was alleged to have violated.

Ms. Hoover stated in her experience there was no common practice that she was aware of in the Mental Health Department to let people know about promotions and positions before an offer for the position was even made.

Ms. Hoover testified that she never publicly congratulated Ms. Coleman on her promotion before she had been offered the position, and that she never told Ms. Coleman to change her signature block, and that Ms. Coleman's recruitment process was completed by October 23, 2019. With respect to responding to a Grievance such as Ms. Garofalo's.

Ms. Hoover stated that she gathered and reviewed AR 300, AR 342, prohibitions and penalties, the relevant NAC's, the original reprimand, and then she responded to each of Ms. Garofalo's four concerns.

Ms. Hoover stated she did not see where Ms. Garofalo had argued she was not insubordinate and not in violation of P & P (L)(1) and would have responded if the issue had been raised in the Grievance.

Ms. Hoover also stated that she did not see where Ms. Garofalo had argued that she did not make an unauthorized representation in violation of NDOC P & P (L)(7) and would have responded if that issue had been raised.

Ms. Hoover testified that she received an email on October 1, 2019 from Ms. Garofalo where Ms. Garofalo had asked who was being hired for the Psychologist II position, and that there was no reason why it should be secretive.

Ms. Hoover stated that she had responded to Ms. Garofalo's email by stating that the selection was not official until the offer was made by Human Resources and the individual accepted the position per Human Resources policy.

Ms. Hoover stated that the minutes of the staff meeting indicated that congratulations were made to Ms. Serrano on her promotion to Psychologist II by Ms. Garofalo.

Ms. Hoover testified that she never authorized Ms. Garofalo to make such a statement, and that the statement made by Ms. Garofalo did not comply with her October 2, 2019 email to Ms. Garofalo.

Ms. Hoover testified that the statement made by Ms. Garofalo was inconsistent with the process laid down in AR 300 on contacting recruits during the recruiting process, as per AR 300 only Human Resources had the authority to reach out and contact the applicant to offer them the position and receive the acceptance.

Ms. Hoover noted that the review packet was not complete, and that they had not received notification by October 10 from Human Resources that the review packet process had been completed, and Ms. Garofalo had violated AR 300 by announcing the appointment prior to the review being completed and an offer being made and accepted by Human Resource's.

Ms. Hoover stated when Ms. Garofalo made her statement on October 10 to her knowledge the position had not been offered to Ms. Serrano, as Human Resources was still in the review process, and per her understanding the review had to be complete before an applicant could be offered a position.

Ms. Hoover stated that at the end of each interview they told applicants the process which moved forward once the packet was submitted was out of their hands and it could take time while Human Resources performed its review and processing, and that the applicant would receive notice via a phone call or in the mail that Human Resources would like to present an offer, and at that point the applicant would either accept or decline the position, after which Human Resources would call them and let them know the status, and none of that had occurred yet.

Ms. Hoover stated that she believed that a written reprimand was a reasonable level of discipline in the case, as it was the lowest level of discipline available.

Ms. Hoover stated that prior to writing this written reprimand for Ms. Garofalo she had never written a reprimand to anyone before for that type of charge, congratulating a promoted employee before Human Resources had made it official, and that since that time Ms. Hoover had never written a reprimand to anyone for congratulating a promoted employee before Human Resources made it official, and added that no employee since had prematurely congratulated or announced a promotion prematurely, and that her answer was based on her knowledge and limited to the Mental Health Department.

Ms. Hoover testified that the NDOC AR's, including 300.5, applied agency wide. She stated with respect to the charge of insubordination at (L)(1), the reprimand did not allege that Ms. Garofalo violated a state statute, but that she violated an NAC.

Ms. Hoover stated that NAC 284.742 said nothing about NDOC employees prematurely disclosing promotions to employees, but was just a general rule of applicability, and that it gave the appointing authorities at NDOC the authority to enforce the prohibitions and penalties.

Ms. Hoover also noted that the reprimand referenced NAC 284.650(6), but that this NAC did not specifically discuss whether premature

congratulations was a violation of a rule, and just addressed whether an employee who engaged in willful disobedience could be disciplined.

Mr. Pick objected, saying that Mr. Geddes' questioning misstated the NAC, as it said insubordination or willful disobedience, so there were two parts of the regulation.

Ms. Hoover was asked when she wrote the reprimand if it was for willful disobedience of her prior instruction to Ms. Garofalo.

Mr. Geddes noted that in looking at the reprimand it listed AR 300.05(5) and (6) as a basis for the reprimand, which Ms. Hoover agreed with.

Mr. Geddes asked Ms. Hoover whether there was anything specifically in AR 300.05(5) or (6) which addressed the question of whether NDOC employees could prematurely offer congratulations to employees on their promotions.

Ms. Hoover responded that this was not in the wording of subsections 5 of 6, but she did not believe that was what Ms. Garofalo had done.

Mr. Geddes asked Ms. Hoover if AR 300.05 addressed the procedures to be followed by the appointing authority and Human Resources, and not the individual NDOC employees.

Ms. Hoover stated the statement was correct.

Ms. Hoover stated that the title of AR 300.05 was "Submission of a hiring packet," and that she did not charge Ms. Garofalo with submitting a hiring packet.

Ms. Hoover also stated that AR 300.05(1) required the appointing authority to select the candidate, and that the appointing authority was Mr. Green.

Ms. Hoover further testified that Mr. Green selected Ms. Serrano for the promotion on October 1, 2019, but that action was part of the paperwork in the hiring packet. In looking at page one of the reprimand (Employee Exhibit 1), second to last paragraph, Ms. Hoover admitted that she wrote she was aware the mental health director had signed the appointment letter on October 1, 2019, and that this letter was part of the hiring packet.

Ms. Hoover also admitted that she had written that the appointment letter was forwarded to Human Resources as part of the hiring packet.

Ms. Hoover testified that AR 300.05(2) (employee exhibit 3), spoke about what the appointing authority would do when forwarding the hiring packet to Human Resources, and so spoke about what Mr. Green was supposed to do.

Ms. Hoover also stated that AR 300.05(3) spoke about requests for appointments at an accelerated pay rate above the first step, and AR 300.05(5) spoke about what the Human Resources department reviewing the packet was supposed to do and required Human Resources to mail out a letter.

Ms. Hoover further noted that AR 300.05(6) spoke about Human Resources contacting the selected candidate to officially offer the candidate the position.

Ms. Hoover noted that there was nothing in AR 300.05 that expressly prohibited others who were not the Human Resources department from offering congratulations to the applicant.

Ms. Hoover also indicated that Ms. Serrano was promoted after Human Resources offered her the position and she accepted.

Mr. Geddes stated in looking at exhibit 1, the charge of insubordination, asked Ms. Hoover if essentially the basis for the charge was that she had sent Ms. Garofalo an email in response to her question, and said that it was no secret who was picked, and that it would become official when it was offered and accepted by that person.

Mr. Pick objected for misstating testimony.

Chair Beigel stated the objection was overruled.

Ms. Hoover responded and stated that she did not believe that was what she was saying, and that she believed what she was essentially saying was it was no secret because Ms. Garofalo had asked why it was so secretive, and her email responded with she was in the interviews and knew who was put forth as a candidate, as Ms. Serrano had scored the highest points, and that the selection was not official until the individual was offered and accepted the position per Human Resources policy, and she thought she was being clear.

Mr. Geddes asked Ms. Hoover whether she wrote "It's no secret" in the email.

Mr. Pick objected as asked and answered, and the witness had already stated what she had intended, and that they had been down that line of questioning.

Chair Beigel stated the objection was sustained.

Ms. Hoover admitted that when she responded to Ms. Garofalo's email that she could have stated that they were selecting Ms. Serrano, but please not to tell anyone, but believed that it was unnecessary to do so.

When asked if she had never heard of anyone at NDOC offering congratulations to an employee for a promotion prior to the official announcement.

Ms. Hoover stated that the question was tricky to answer, because the way the procedure worked was once Human Resources finished its packet review and made the offer to the individual, and the individual accepted, the particular department was notified, and she was not privy to when that occurred outside of the Mental Health Department.

Ms. Hoover stated she had heard of people discussing promotions, but was unsure of what had already transpired in those cases with respect to Human Resource's processing, so she did not know if Human Resources had reached out to that individual with an offer that had been accepted.

Ms. Hoover testified that she did not know one way or the other whether informal congratulations had been offered to an employee before Human Resources finally made the official offer outside of Human Resources, as she had no personal knowledge of such events.

Ms. Hoover testified that she had not encountered the violation that formed the basis of Ms. Garofalo's charge prior to that time, nor had she witnessed such a violation since the reprimand was issued to Ms. Garofalo.

Ms. Hoover testified that with respect to the recruitment process AR 300.05 was supposed to set out the guidelines by which Human Resources did their hiring and recruiting, and nowhere in the guidelines did it say one could inform an applicant he or she was selected before they were even offered the position.

Mr. Geddes objected for vagueness and ambiguity.

Mr. Pick clarified his question.

Ms. Hoover responded that Mr. Green selecting Ms. Serrano's name and putting it forward to Human Resources on October 1 did not give Ms. Garofalo license to publicly make the statement she made at the staff meeting.

Ms. Hoover further testified that the appointment letter was simply part of the packet that was prepared to be sent to Human Resources, and went along with the application, the rejection letters and the letter offering that was signed and the candidate list that was received, and was not an appointment at that point.

Ms. Hoover stated it was noted that, chronologically, the interviews happened, the applicant was selected, the packet was sent to Human Resources, but at that point an applicant was not given a job offer.

Ms. Hoover noted that it took time to review the packet, and the time varied, and Human Resources made the decision to make the offer via phone or mail. Thus, when Ms. Garofalo made the announcement at the October 10 staff meeting, to the best of Ms. Hoover's knowledge of Ms. Serrano had not been offered the position by management or anyone in Human Resources as the packet was still being reviewed by Human Resources.

Ms. Hoover stated apart from what AR 300.05 said about the process for recruiting and notification, she had emailed Ms. Garofalo on October 2, 2019.

Ms. Hoover clarified that when she talked about there being nothing secret in the recruitment and hiring for the Psychologist II position she was simply mirroring back Ms. Garofalo's words, it was not a secret, as Ms. Garofalo had been part of the interview process, so she knew who the panel had selected as the candidate for Human Resources to review, and that the last sentence was saying that selection was not official until the individual was offered and accepted the position.

Ms. Hoover said that they did not typically make congratulatory announcements that the candidate had been selected, or at least she had never heard of doing this before.

Ms. Hoover further stated that in her email she never allowed Ms. Garofalo to publicly announce the candidate who had been selected for the Psychologist II position.

Ms. Hoover stated on cross examination if something went wrong after a person had been selected for a position by Human Resources, whether the NDOC was free to rescind the provisional offer.

Ms. Hoover stated there would not have been an offer made.

Ms. Hoover indicated that usually what happened was that they received a phone call from Human Resources, stating that the candidate put forth did not meet Human Resource's screening, and so they were asked what they wanted to do.

Mr. Geddes brought to Dr. Hoover's attention that AR 300.05(6)(c) (Employee Exhibit 3), which read: *the selected candidate may now be contacted and offered the position. An appointment will be scheduled for the completion of the required paperwork with the Human Resources Division. Subsection (c) also said unsatisfactory employment history or background checks, falsification of employment may be grounds for rescission of the conditional offer.*

Ms. Hoover stated that she did not notify Ms. Coleman that she had been selected for promotion prior to Human Resources making a formal

announcement, nor did Mr. Green, and that Human Resources had notified Ms. Coleman.

Ms. Hoover stated in looking at exhibit 2, admitted that she had stated that Mr. Green had could have announced Ms. Coleman's promotion at his discretion.

Mr. Geddes asked if Mr. Green had discretion to announce the promotion of Ms. Coleman prior to Human Resources making it official, to which Ms. Hoover stated that Mr. Green did not have that authority, and that he did not do so in that situation.

Ms. Hoover clarified her statement concerning Mr. Green having discretion.

Mr. Pick objected for relevance purposes and bordering on argumentative.

Mr. Geddes responded that it was contained in the Grievance, and was therefore relevant, and bore on Ms. Hoover's credibility and was relevant.

Chair Beigel stated the objection was overruled.

Ms. Hoover stated that her statement concerning Mr. Green indicated that NDOC had a history of sending out email announcements on upper level promotions via the IT department, which could occur days after someone had been in their position, and had nothing to do with the actual offer and acceptance, and was simply an announcement to the institution that a person had promoted.

Ms. Hoover stated with regard to Ms. Coleman's promotion, that she was unaware if Warden Williams had announced that promotion prior to official notification going out but based on Ms. Garofalo's testimony the announcement had been made after Human Resources had offered her the position.

Ms. Hoover expanded on the process surrounding Ms. Coleman's promotion announcement by stating that she had received a phone call from Human Resources on October 18, 2019 indicating that the hiring process had been completed, and as Ms. Hoover was Ms. Coleman's current supervisor, and as the pay period was ending was she agreeable to a start date of the next pay period.

Member Bauer questioned Ms. Hoover if she, or if she knew if Mr. Green or Warden Williams had directed Ms. Garofalo not to discuss the Serrano promotion.

Ms. Hoover responded in substance no.

Member Bauer also asked Ms. Hoover if she was aware of a policy that prohibited discussing the promotion of an NDOC employee before it was announced by Human Resources.

Ms. Hoover responded she was not aware of any such policy.

Chair Beigel asked whether Ms. Garofalo had ever been told that the information concerning Ms. Serrano's promotion was confidential.

Ms. Hoover responded no, but that it was an unwritten policy of NDOC's that such announcements were not made.

Ms. Hoover stated one of the last things was done at an interview was that the applicant was asked if he or she had questions, the process was explained to them, that once the packet was complete it went to Human Resources, and was out of their control, Human Resources reviewed the packet, and they would contact the applicants, and the official offer would come from Human Resources.

Mr. Pick asked Ms. Hoover about the last sentence of her October 2 email to Ms. Garofalo.

Ms. Hoover responded that she was saying that the selection was not official, so we were not going to make any announcement.

Ms. Hoover added that since Ms. Garofalo was on the interview committee she knew who had been selected, and by saying that the selection was not official until it was offered by Human Resources and accepted that there was no secret who was selected, so therefore she should wait and not make any announcement, and that was what she was implying in that statement.

Mr. Green stated that he was the Mental Health Director for NDOC and had held the position for 22 months.

Mr. Green also stated that in NDOC hierarchy he was two levels above Ms. Garofalo.

Mr. Green indicated that he served as the appointment authority for Mental Health, and that he signed the selection notice for applicants. He was familiar with NDOC's prohibitions and penalties and had issued LOI's in the past. He was familiar with the AR 300's concerning recruitment and hiring.

Mr. Green testified that he was familiar with Ms. Garofalo's written reprimand, and her Grievance.

Ms. Garofalo stated with respect to the allegation that NDOC selectively enforced the policy had been accused of violating, and that it was

common practice at NDOC to inform staff of selections and promotions ahead of notification letters from NDOC, this action had only occurred once to his knowledge.

Mr. Green stated the hiring process at mental health NDOC, as starting with identification of a staffing need, and then a staffing requisition request was sent to Human Resources.

Mr. Green also stated Human Resources then reviewed the request, would then place a job announcement in NEATS, after which people applied for the job and eventually the announcement was closed. Human Resources then rated applicants and provided a list for NDOC to review. Applicants were then selected for interviews. Following interviews, a selection was made of the person who scored the highest points on the interview, and a hiring packet was created and sent to Human Resources.

Mr. Green stated he signed off on the selection as the appointing authority, and the hiring packet was forwarded on to Human Resources for processing, and that after the review was completed he was notified that the review was completed and the applicant would be notified, after which he was notified whether or not the applicant accepted the position.

Mr. Green testified that he was involved in the recruitment of Ms. Coleman, and Ms. Garofalo was not involved at all in that recruitment and was not copied on communications between Human Resources and NDOC to his knowledge.

Mr. Green stated, the recruitment had been posted either in August or September 2019, Ms. Coleman had interviewed October 16, 2019, Ms. Coleman's name had been put forward to Human Resources for the promotion the next day, and that the hiring packet had been completed that day.

Mr. Green stated that the start date for Ms. Coleman was October 21, 2019, and the decision on the start date was made October 17, 2019, which was when Rene Fletcher reached out to Ms. Coleman on whether or not she would accept the position.

Mr. Green stated that he found out that Ms. Coleman accepted the position on October 17, 2019.

Mr. Green testified that he was told that the letter confirming acceptance of the position by Ms. Coleman was sent out October 17, 2019, and that he reached out to the warden to let him know the status of the recruitment on October 18, 2019, and that Ms. Coleman had told him that a formal announcement had been made by Warden Williams on October 23, 2019.

Mr. Green's stated human resources had completed all of the paperwork for the recruitment, and human resources had extended an official officer

to Ms. Coleman, who had accepted the offer, with the final acceptance letter being put in the mail.

Mr. Green stated that he observed no violation of NDOC policy by Ms. Hoover in Ms. Coleman's recruitment.

Mr. Green testified that they had learned on October 11, 2019 that the PREA and background investigations had not been completed, so the packet had not been approved by human resources, and at the time of Ms. Garofalo's violation Ms. Serrano had not received an official offer, nor had he been notified that the recruitment packet had been completed, and so Ms. Serrano's could not have officially accepted the job offer at the time of Ms. Garofalo's violation.

Mr. Green stated that Ms. Caldwell-Barr was a Psychologist III at the Lovelock Correctional Center who oversaw the mental health operations at that facility, and that he conducted supervisor meetings where Ms. Caldwell-Barr was present.

Mr. Green further stated that he never said there was nothing wrong with letting new hires know they were selected before official notice was sent out by human resources during a July 29, 2019 supervisor's meeting.

Mr. Green further testified that he had reviewed the minutes of that meeting, and that there was nothing in the minutes where he had stated that Ms. Garofalo's written reprimand was not actually a violation, and there was nothing in the minutes where he had said that new hires could be told about their selection before they were officially offered a position.

Mr. Green indicated that the actual violation in Ms. Garofalo's November 2019 written reprimand was two-fold: insubordination and misrepresenting the agency, as the agency had not officially made the selection of Ms. Serrano at the time of Ms. Garofalo's announcement.

Mr. Green stated the instructions Ms. Garofalo was being insubordinate to where the instructions given to Ms. Garofalo by Ms. Hoover from October 2, 2019 in an email, and AR 300.05. The email from Ms. Hoover instructed Ms. Garofalo that she needed to follow Human Resources policy, and that the selection was not official until Human Resources made the offer and the offer was accepted.

Mr. Green stated, Ms. Garofalo did not follow this instruction. AR 300.05(6) stated that an applicant can be contacted and offered a position after human resources notified the appointing authority when the hiring packet review was complete and when the notification letter was mailed.

Mr. Green testified that at the October 10, 2019 staff meeting Ms. Garofalo announced the promotion before the AR 300.05(6) permitted, so Ms. Garofalo did not follow AR 300.05(6).

Mr. Green testified on cross examination, per his understanding, that the AR's applied NDOC wide and not just to the Mental Health Department.

Mr. Green also testified that his answer to whether or not it was a common practice to congratulate employees prior to the official written notification by human resources was limited to the Mental Health Department, so that he had no knowledge as to whether others outside of that department engaged in the practice of congratulating employees prior to official written notification by human Resources.

Mr. Green further stated that Ms. Serrano was promoted without any incident regarding her PREA and background investigation, and that it was true that if something went wrong, even after the offer had been made, that NDOC could rescind the offer.

Mr. Green also stated that he had stated that there was no offer made by Mr. Garofalo, as there had been no offer available at the time Ms. Garofalo's statement had been made.

Mr. Green further stated he recalled the meeting where Ms. Caldwell-Barr raised the issue about new hires being contacted, and that the NDOC hiring process could be long and frustrating, and so he encouraged his staff to keep contact with applicants while waiting to hear from Human Resources, so applicants did not feel abandoned.

Mr. Green stated he had recalled Ms. Caldwell-Barr stating that she did not think she could contact applicants based on what happened with Ms. Garofalo, and that he had told Ms. Caldwell-Barr that she could go ahead and have such conversations with applicants to let them know they were not forgotten, but no one was allowed to tell an applicant they were the selected candidate prior to the official process being completed.

Mr. Green stated that Ms. Caldwell-Barr never specifically asked if she could disclose to the candidate that he or she was the one being selected, but that the process was still ongoing, and that he gave permission to no one to let an applicant know the applicant had been selected.

Chair Beigel asked Mr. Green if they contacted every candidate who interviewed to let the candidate know he or she was not forgotten, and he stated that they would reach out to people who were selected to ask if they had any questions, but the selected candidate was not told he or she was the person put forward or where hired.

Mr. Green stated that in response to Ms. Caldwell-Barr's question to him he had clarified with human resources that there was no prohibition from

reaching out to people during the Human Resources review process and they were permitted to speak with candidates who had been selected and not selected, but that it made no sense to reach out to candidates who were not selected for a position.

Mr. Green stated that it did makes sense to reach out to candidates who were selected to make sure they were still interested, but the candidates were not told that they were the selected individual or were hired.

Mr. Green testified that the gist of the contact with the candidates was not to “give up” on the state.

Chair Beigel asked to begin its deliberations.

Member DuPree stated that he was uncomfortable with the written reprimand, as he stated that Ms. Hoover had stated that the instruction not to say anything was implied, because it was not actually in writing.

Member DuPree also stated that he did not feel comfortable with Ms. Garofalo’s actions being characterized as representing the position of the agency, because there was a big difference between what a person’s says in a staff meeting, which was typically an informal setting, and what is said as a human resource officer, sending out a hire letter, and that he did not believe that Ms. Garofalo thought for a minute that she was extending a job offer at the staff meeting, and that it would be a stretch for anyone to think that.

Member Davies stated that he thought the email which Ms. Hoover sent was somewhat contradictory, as it seemed to say it was an open secret but the hiring was not official, and that there was no clear guidance in the email that it was a directive to not discuss the matter, and thus he could not see insubordination being established.

Member Davies stated that Ms. Garofalo had previously been issued an insubordination reprimand that had been reduced to an LOI, so that if a written reprimand was indeed the lowest for of discipline for a written reprimand why did NDOC reduce the previous written reprimand to an LOI, so it seemed NDOC was not following its own rules, and he was prone to affirming the Grievance.

Member Bauer stated that she thought the matter came down to the substance of what was said by Ms. Garofalo at the staff meeting, and she believed that it was a matter of poor judgment, rather than insubordination or misrepresentation.

Member Bauer stated she felt that whether other people engaged in the same behavior or spoke about promotions before they were allowed to was not as important, and again felt it was a matter or poor judgment to

prematurely discuss the promotion, but that she did not feel that Ms. Garofalo doing so was insubordination or misrepresentation.

Member Bauer stated on that she had not heard or read evidence that Ms. Garofalo disobeyed or refused to obey written or verbal instruction, or a statute, regulation or policy, or where Ms. Garofalo represented the NDOC, in any way in an official capacity, or offered the promotion, but that it was just discussed in a staff meeting, that there was an announcement and some congratulations.

Member Bauer further stated that she agreed with her fellow EMC members and saw no reason to uphold the written reprimand as issued.

Member Bauer stated that in general she agreed with everything that had been said, but that it could be a big deal if something was announced prematurely, but it did not seem like Ms. Garofalo was acting willfully or insubordinately, against Ms. Hoover's email, and that the email was not clear, as Ms. Hoover had been like "I implied this, or "I meant that" so that if the email had to be explained as to what was meant now, a year and a half later, she did not know if she had read Ms. Hoover's email if she would have understood what Ms. Hoover meant.

Chair Beigel stated that after having done numerous job interviews and knowing who was to be selected, and knowing she was not allowed to say who was selected was due to someone telling her the information was confidential and so was not allowed to announce the information, and if a person had never been told that information, how would a person know that the information was confidential.

Chair Beigel also stated that she was uncertain if this information was ever stated, and Ms. Hoover had stated that Ms. Garofalo was not directly told that the information was confidential.

Member Bauer motioned to grant Grievance #6937, to direct the NDOC to remove from any and all files the written reprimand issued to Michaela Garofalo dated November 11, 2019. Based on the evidence presented, during the subject event the Grievant was not insubordinate or willfully disobedient and did not officially represent the agency in an unauthorized capacity.

Member DuPree seconded the motion.

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 was employed by NDOC as a Psychologist III on October 10, 2019.
3. Grievant received a written reprimand on or about December 3, 2019, which was dated November 11, 2019.
4. NDOC alleged in the written reprimand that Grievant had violated NAC284.712(L) (1) & (7), titled "Prohibitions and Penalties:"
 - a. Disobeying or refusing to obey a statute, State regulation, agency policy, written or verbal instruction or lawful order.
 - b. Unauthorized representation of the agency. NAC 284.650(6): Insubordination or willful disobedience.
5. NDOC also alleged that as part of Grievant's violation of NAC 284.712(1), that Grievant had violated AR 300.05 (5 & 6), which stated:
 5. The Human Resources Division shall notify the Appointing Authority when the hiring packet review is complete and shall mail letters.
 6. The selected candidate may now be contacted and offered the position. An appointment will be scheduled for the completion of the required paperwork with Human Resources.
6. Ms. Garofalo, along with Ms. Hoover, participated in interviewing candidates for a Psychologist II position in NDOC's mental health department in 2019.
7. Ms. Hoover, a Psychologist IV was Ms. Garofalo's immediate supervisor.
8. Ms. Serrano, an NDOC employee, scored the highest among the interviewed candidates for the Psychologist II position.
9. On October 1, 2019, Ms. Garofalo emailed Ms. Hoover asking about who was selected or put forth for the Psychologist II position.
10. On October 2, 2019, Ms. Hoover responded to Ms. Garofalo's email sent October 1 by stating ". . . there was no secret, you were in the interviews and the discussion of putting forth the interviewee with the highest points. The selection is not official until the individual is offered and accepts the position per Human Resources policy."
11. Ms. Hoover's email was unclear, and in any event did not expressly direct Ms. Garofalo not to discuss the fact that Ms. Serrano had been the candidate who scored the highest points at the interview for the Psychologist II position or that Ms. Serrano would be hired for the Psychologist II position.
12. On October 10, 2019 Ms. Garofalo congratulated/announced at a staff meeting that Ms. Serrano had been promoted to the Psychologist II position.
13. On October 1, 2019, Dr. Green, as appointing authority, had picked Ms. Serrano for the Psychologist II position and put forward her name to Human Resources. However, Mr. Green picking Ms. Serrano as the candidate and sending her name to Human Resources was only part of the hiring process.
14. Mr. Green learned on October 11, 2019 that the PREA and background investigations for Ms. Serrano had not been completed, nor had Human Resources mailed out any letters to Ms. Serrano,

so Ms. Serrano's packet had not been approved by Human Resources by that date.

15. Ms. Serrano had not received nor accepted an official offer from NDOC for the Psychologist II position by October 11, 2019.
16. Ms. Serrano eventually received the official offer for the Psychologist II position from Human Resources and accepted that position.
17. Neither Warden Williams nor Mr. Green specifically directed Grievant not to announce Ms. Serrano's promotion, and there was no written NDOC policy that specifically prohibited discussing the promotion of an NDOC employee before it was announced by Human Resources.

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. For this Grievance, it was Grievant's burden to establish by a preponderance of the evidence that she did not willfully disobey a statute, state regulation, NDOC policy, a lawful order/instruction, or make an unauthorized representation, which the Grievant was alleged to have done on October 10, 2019 in the written reprimand NDOC issued to the Grievant dated November 11, 2019.
3. Ms. Garofalo did not violate NAC 284.650(6) by willfully disobeying any instruction/order from Ms. Hoover in Ms. Hoover's October 2, 2019 email response to Ms. Garofalo. The instruction/order not to disclose who was selected for the Psychologist II position was not expressly written by Ms. Hoover, and one had to imply that Ms. Hoover was ordering/instructing Ms. Garofalo not to disclose who was selected for the Psychologist II position. Any instruction/order by Ms. Hoover to Ms. Garofalo to not to disclose who was selected for the Psychologist II position was unclear.
4. Ms. Garofalo did not violate NAC 284.742(L) (1) & (7). Ms. Garofalo did not refuse or disobey AR 300.05 (5) and (6), as AR 300.05 (5) concerned actions by Human Resources, and no other NDOC employees. With respect to AR 300.05(6), Ms. Garofalo at the October 10, 2019 staff meeting did not appear to believe that she was acting in any official capacity on behalf of NDOC and offering Ms. Serrano the Psychologist II position. Rather, Ms. Garofalo's actions on October 10, 2019 were in the setting of a staff meeting and appeared to be offering informal congratulations to a co-worker.
5. Conclusions of law that are more appropriately findings of fact shall be deemed findings of fact.

DECISION

Grievance #6937 is hereby GRANTED. The NDOC is directed to remove from all files the written reprimand issued to Michaela Garofalo dated November 11, 2019.

The motion carried unanimously.

MOTION: Motioned to grant Grievance #6937, to direct the NDOC to remove from any and all files the written reprimand issued to Michaela Garofalo dated November 11, 2019.

BY: Member Bauer

SECOND: Member DuPree

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

6. **Discussion and possible action related to Grievance #7635 for John Lum, Department of Health and Human Services an appeal of a withdrawal of the Grievance by DHRM pursuant to NAC 284.693 possible action may include reviewing the appeal and either affirming DHRM’s decision to remove the Grievance at the level at which it was withdrawn.....– Action Item**

Chair Beigel opened the floor for discussion.

Chair Beigel stated when she reviewed the case, she noted she did not see an error when the Division of Human Resources Management withdrew the Grievance based on the reasoning it didn’t meet the definition of a Grievance per the Agency request.

Chair Beigel noted a participant in the chat who had called in for the hearing representing Mr. Lum.

Chair Beigel stated that the Grievance was not being heard for that day, it was only the decision to reinstate the Grievance at the level it had been withdrawn or to agree with the decision made to withdraw the Grievance.

Chair Beigel stated the process if the Grievance is presented to Division of Human Resources Management by the Agency due to it not meeting the definition of a Grievance. She stated the definition of a Grievance was out of a relationship between the Agency and the Employee. She stated this Grievance was an appeal of suspension.

Member DuPree stated he had agreed he did not see where Division of Human Resources Management had withdrawn it and that it should not have been.

Member Davies stated this grievant is asking for recuperation of lost wages, that was something the EMC did not have jurisdiction to grant.

Member Bauer stated the Grievance was grieving the suspension and noted the EMC did not have jurisdiction to grant that remedy or appeal for a remedy with the Hearings Division.

Chair Beigel stated the grievant has stated the Grievance is more than just the appeal of suspension.

Chair Beigel read the message in the chat from Ms. Foley who typed she was representing Mr. Lum.

Chair Beigel stated the remedy Mr. Lum is seeking is to reverse the suspension and offer remedy to the suspension. She stated the reason this case is being heard by the EMC would solely decide if the Grievance should be reactivated or reaffirmed only. She stated that is something that the EMC does not have jurisdiction over suspension.

Member Bauer stated that was exactly what the remedy was that the grievant was looking for. She stated he wanted the EMC to decide to reverse the suspension.

Chair Beigel stated the EMC can deny the appeal as it doesn't meet the definition of a Grievance.

Member Bauer stated Ms. Jenny Foley in the chat who has called in for Mr. Lum states the attachments to the appeal were not presented.

Chair Beigel stated the facts were there, listed in the steps up to when it was withdrawn, there was no evidence resented that was not included.

Member Bauer stated she just wanted to give the opportunity for the grievants representative to know the facts were presented, they have decided based on the facts provided.

Chair Beigel stated the EMC can move to deny the appeal based on NRS 284.384. She stated the venue would not be the EMC to offer remedy.

Member Davies stated he had agreed with Chair Beigel this was not the EMC jurisdiction.

Chair Beigel stated the correct venue would be in the hearing officer's office. She stated it was mentioned in the Grievance itself to submit an appeal.

Chair Beigel stated the motion to deny the appeal for Grievance #7635 does not meet the definition of a Grievance based on NRS 284.384.

Member Davies seconds the motion.

Member DuPree asked what Mr. Whitney thought of the wording in the

motion.

Mr. Whitney responded to Member DuPree that the motion was appropriate.

Chair Beigel called for a vote.

The motion carried unanimously.

MOTION: Moved to affirm DHRM's decision to withdraw the Grievance #7635, to deny the appeal for Grievance as it does not meet the definition of a Grievance based on NRS 284.384.

BY: Chair Beigel

SECOND: Member Davies

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

7. Public Comment

Ms. Jenny Foley wrote in the chat that she did not agree with the outcome of the agenda item for Grievance #7635 for Mr. Lum.

8. Adjournment

Chair Beigel called the meeting to order at approximately 2:24 pm.