



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
July 23, 2020

Pursuant to Governor Sisolak's March 22, 2020 Declaration of Emergency Directive 006, 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). **Accordingly, this hearing was conducted remotely.**

Committee Members:

Management Representatives

Present

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

Employee Representatives

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

Staff Present:

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

1. Call to Order

Chair Puglisi called the meeting to order at approximately 11:32 am.

2. Public Comment

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

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

Chair Puglisi opened the meeting with Committee introductions.

Chair Puglisi attempted to get the audio on a CD submitted by Ms. Lake to work on his computer. The exhibit packet included a CD of a section of the Legislature Hearing where the rural plus 5% increase was approved.

Ms. Lake requested the Chair that all four grievances be heard together as they are all four very similar if not the same as the other.

Chair Puglisi stated he had reviewed the exhibit packets and if it was ok the Committee uses Mr. Stolk's exhibit packet as it does mention all the points of all four grievances.

Chair Puglisi asked both the Agency Ms. Christina Leathers for NDOC, and Ms. Jeanine Lake Representing the Grievants if there was any objection to the request.

Ms. Leathers and Ms. Lake both agree to use Mr. Stolk's exhibit packet as the primary packet to present to the Committee.

4. Approval of Minutes – Action Item

Chair Puglisi asked the Committee to approve the combined minutes for May 30, August 29, October 03, and November 07, 2019.

Member Beigel stated that the minutes be approved as one set and motioned to approve the package of minutes.

MOTION: Moved to approve minutes.

BY: Member Beigel

SECOND: Member Thompson

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

Chair Puglisi asked Ms. Lake and Ms. Leathers if either party objected to hearing the Grievances all together #6607 for Timothy Jones, #6612 for Michael Stolk, #6620 for Debra Boone-Sharp, and #6627 for Alice Jacoby.

Ms. Lake responded with no objection.

Ms. Leathers responded with no objection.

5. Adoption of the Agenda – Action Item

Chair Puglisi requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.

BY: Member Thompson

SECOND: Member Beigel

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

6. Discussion and possible action related to Grievance #6607, #6612, #6620, and #6627 of Timothy Jones, Michael Stolk, Debra Boone-Sharp, and Alice Jacoby with the Department of Corrections – Action Item.

Chair Puglisi swore in the witnesses Keyna Jones, Rachel Baker, Timothy Jones, Michael Stolk, Debra Boone-Sharp, and Alice Jacoby.

Chair Puglisi noted Ms. Jeanine Lake from local 4041 of AFSCME Union was Representing the Ely group of Grievants, the Ely group was calling in from Ely on a video conference line.

Ms. Lake began her opening statement. She stated the grievants were in front of the EMC defending the facts they believed was an unfair decision made by the Nevada Department of Corrections based on the grievant's inquiry, and a decision that was contrary to the Legislation intent of the plus 5% for Ely State Prison custody staff. She stated these employees had no choice but to take their grievances to the EMC due to the Agency NDOC not being able to remedy the concern. She continued the Employees testified that they have learned through the process of research and reviewed of the Legislative Session testimony which they feel proves their point that the plus 5% pay increase should have been given to all Custody Staff employed at the Ely State Prison and not just some of the Employees.

Ms. Lake stated that at least one of the Grievants had spoken with their State Senator who also confirmed to them that the plus 5% was to go be allocated for all Custody Staff at the Ely State Prison.

Ms. Lake noted that she reached out on behalf of the Employees to the State Senators, she had asked the Representatives to join the EMC hearing by phone but was not able to happen in time for the hearing with their schedules.

Ms. Lake asked the EMC to give a favorable decision to the Employees at the Ely State Prison.

Ms. Leathers stated that the Grievances heard at EMC from the Ely State Prison were not able to get the remedy they sought from the Agency. She stated the Agency believed they acted within statutory regulation for the special pay adjustments. She continued it was decided by the Legislative Session and ultimately decided by the Governor's Office of Finance that

guided the NDOC in submitting the plus 5% for those individuals who were not already receiving the plus 5% pay increase.

Ms. Leathers stated the testimony for the hearing hopefully will show the plus 5% had just cause and the Agency did what was advised in good faith. She stated the Agency didn't have the authority to give an additional 5% increase to an employee who is already receiving the increase of the plus 5%.

Chair Puglisi asked Ms. Lake who would be the first witness she wanted to call.

Ms. Lake called her first witness Mr. Michael Stolk one of the Grievances.

Mr. Whitney interrupted to confirm the witnesses were sworn in to testify, he offered guidance that they could be sworn in as a group, but they must all be sworn in before testifying.

Chair Puglisi asked all the Officers who were on the teleconference in Ely Nevada to stand in the camera view. He swore them in to testify.

Ms. Lake started off her questioning with Mr. Stolk, she asked him when the Legislature Session voted on the 5% increase for the rural areas, was it the understanding of himself and his staff that it would be allocated to all Custody Staff. If it was not how did NDOC present it to the staff at the facility.

Mr. Stolk responded it was his understanding that was going to be the process, that it would include all Custody Staff. He continued, the information they all received was the same it was to cover all Custody Staff. He explained they had watched the Legislative Session on the plus 5% pay increase, they did their research, they reached out to the State Officials who sat on the board, it was never mentioned in all the prepping that if this passed it would go to certain individuals only.

Mr. Stolk continued with the understanding from the session and all the research done at no point was it ever determined or mentioned that they would be holding that 5% rural pay from the group that was already given the 5% prior. The information shared with the staff was the original 5% that Ely State Prison had was also called "rural pay", however, it was for an entirely different reason. The rural pay they had been receiving when he started at the facility back in 2000, the cost of living in the rural area was higher, and the cost to travel was by far more comprehensive than others that live in a metropolitan area. The new approved rural pay that was approved was for; rural pay, recruitment, and retention and to keep up with the competitive labor market in their area. He continued in reviewing the plus 5% he learned of the categories that were approved with those finances and they could put the 5% increase in by adding a different category.

Mr. Stolk stated the NDOC has listed only one category for the 5%, they cannot list the 5% increase, and 5% rural fee in the same category. He stated what he understood was the Agency would just need to add another

category, then they could have two plus 5%. This rural fee of 5% was different from the 5% increase everyone gets there at the Ely State Prison Facilities.

Ms. Lake asked Mr. Stolk if his understanding was the 5% increase was for retention and recruitment of staff at those facilities and not the rural area differential.

Mr. Stolk responded to Ms. Lake, “yes exactly, that is in all the documentation we reviewed”. It is also in the video provided for testimony, the minutes from the session that are included in the exhibit packet also showed the same information in the video provided in the exhibit. The approval was specifically for recruitment, and retention and to keep a competitive labor market for the Ely rural area. That is what the plus 5% was specifically created for, that was voted, and approved for.

Ms. Lake stated she wanted the Board to review Mr. Tim Jones exhibit packet on exhibit A. She continued, in reviewing the memorandum that reads the cost-of-living adjustment from Chief Christina Leathers.

Ms. Lake continued reading the memorandum in the second paragraph it stated the adjustment is intended to recognize the need for improved results in recruitment and retention at EST and ECC custody staff.

Ms. Lake questioned Mr. Stolk if he reviewed the memorandum.

Mr. Stolk responded he had.

Ms. Lake asked Mr. Stolk referring to exhibit A in Mr. Jones's employee packet dated July 02, 2019, it read the approved legislative adjustment was for staff specifically for Lieutenants, Sergeants, Senior Correctional Officers, and Correctional Officers.

Mr. Stolk responded he had reviewed the memorandum; it was also listed in exhibit 2 of Mr. Stolk’s exhibit packet.

Ms. Lake asked Mr. Stolk when he was researching the Legislative hearings on this matter, what he found.

Mr. Stolk stated in reviewing the Memos, Legislature Minutes, the Videos of the Hearings, and the Testimony was it ever mentioned that if he was already given the 5% he wouldn’t get the 5% approved by the Session for the rural area retention. He stated nothing was ever brought up at the Agency or mentioned with the Legislative Session that passed this budget.

Mr. Stolk continued that he believed it was the intent of the 5% that it was approved for everyone at the facility. He stated he also verified that it should have gone to everyone in speaking with the Legislative Members they also have verified that yes it should have gone to everyone in the rural areas.

Mr. Stolk stated he tried to get these Legislative Members who the Grievants had spoken with to come to the hearing to testify however, due to the current pandemic status of the world that was not able to happen.

Mr. Stolk continued by stating he had emails from NDOC that confirmed the 5% was to go to all custody staff that was included in his exhibit packet in tab 6. He stated it was confirmed by the members and the grievants were presenting their case based on that information they were given when the budget had passed.

Ms. Lake asked Mr. Stolk with his exhibit packet he submitted a CD, it was ready to have that played for the EMC to hear.

Mr. Stolk replied, he knew what was on the CD and that if the Committee Chair thought it was helpful and appropriate to play, he would like it to be heard.

Ms. Lake stated if the Chair was ok with playing the CD on the part they were referencing as some of the members were not able to get the audio to work. She would be able to play it on her speaker so everyone could hear it if there were no objections.

Chair Puglisi stated the section that Ms. Lake wanted played was less than 3 minutes and he played the audio for the Members.

Ms. Lake asked Mr. Stolk if there was any other information, he had found in the discovery that was not included in his packet, or had she missed any details he wanted to mention.

Mr. Stolk stated he had submitted all the information needed in his exhibit packet to resolve the grievance. He understood that the Grievances heard at the EMC did not have the jurisdiction to offer a remedy. He stated he wanted the Committee to hear the facts and agree with the Grievants that the 5% rural pay increase should be given to all Correctional Staff in the Ely State Correctional Center. He continued stating he wanted the issue moved forward to be on the Interim Finance Committee agenda who could offer a remedy or the clarification needed for a Committee to offer a remedy. He stated they understood the EMC was not going to fix the problem and solve the Grievances and that is not what the group was looking for.

Mr. Stolk continued, he wanted the EMC to agree with the facts they provided and once they had that agreement, they could move forward with the Finance Committee.

Chair Puglisi asked the Agency NDOC if they would like to cross-examine the witness, Mr. Stolk.

Ms. Christina Leathers stated no, at that time she had no questions for cross-examining.

Chair Puglisi asked Ms. Lake who would be the next witness she was going to question.

Ms. Lake called Mr. Timothy Jones.

Ms. Lake stated to Mr. Jones, the testimony he was going to be giving was similar if not the same as Mr. Stolk. She wanted to give him a chance to let the Committee know what steps he took to look into the 5% pay increase for the rural areas when it was told to the staff not all staff would be receiving the raise.

Mr. Jones stated he took the same steps as Mr. Stolk did, he reached out to the State Senators, he stated he spoke with them a dozen or more times.

Mr. Jones stated everyone he spoke with told them not to give up on this. He continued that he spoke with the Members over and over and they confirmed what they thought should have gone to all staff in the Ely State Corrections.

Ms. Lake asked Mr. Jones if he had anything further to add.

Mr. Jones stated he had about 50 staff members that this affected, and it has been a major moral deterrent. He stated he would like to see everyone be able to get what was approved in the legislative session for the rural areas.

Chair Puglisi asked Ms. Leathers if she would like to cross-examine.

Ms. Leathers responded no; she had no questions.

Chair Puglisi asked Ms. Lake for her next witness.

Ms. Lake called Ms. Alice Jacoby.

Ms. Jacoby stated all the Grievant packets were the same and she had nothing more to add than what Mr. Stolk and Mr. Jones testified to.

Ms. Lake asked Chair Puglisi if Ms. Leathers had any cross-questions for Ms. Jacoby.

Chair Puglisi asked Ms. Leathers if she had any questions for Ms. Jacoby.

Ms. Leathers responded she had nothing to ask of the witness.

Ms. Lake stated she had nothing further to present.

Chair Puglisi asked the EMC Members if they had any questions for the Employee side of the presentation.

Member Beigel stated she had questions; she wasn't sure who could answer them specifically. She asked if the non-custody staff got the special rural pay and did they get the rural pay before that time when it was approved in Legislative Session or after.

Ms. Leathers stated this was specifically for Custody Staff only, it was outlined in the budget line item. She continued, previously in 2011, there

was a similar budget shortfall at that time when initially the plus 5% was removed from Ely in 2011 due to freezes.

Ms. Lake stated when looking at the correspondence that came out from the Department NDOC, the testimony from the exhibit packets you can see it was for the recruitment and retention of those positions.

Member Beigel stated her question was in some of the items presented with the budget, why did the Grievants think they needed to go back to the IFC to fix this if what the budget contained there is enough money to go there, why was there the need to go back and have it reviewed.

Ms. Lake responded to Member Beigel that there was some concern expressed during the grievance process that it was mentioned there was not enough money allocated to go to everyone it was intended to cover and that is why it was determined that the plus 5% increase would only go to a certain group of employees. She stated when the Grievants filed the complaint and in the conversations with the State Senators, it was suggested if nothing else they could go back to the Legislative Committee and state their case that this needs to be revisited.

Mr. Stolk asked Chair Puglisi if he could add to the answer Ms. Lake just gave to Member Beigel.

Chair Puglisi acknowledged Mr. Stolk.

Mr. Stolk responded it was always the Employee's understanding that there was already enough money budgeted for everyone to get the plus 5% pay increase. The reason the group went through the grievance process was to cover all bases regardless because they found the money was not allocated correctly.

Chair Puglisi asked what the paygrades were for the Grievants being heard, he reviewed the Legislative Session. It was listed as a plus 5% adjustment. He asked this because he stated how it was broken down in the budget that was approved was a special increase for salary adjustment if you were doing extra duties like if you were bilingual and you needed to translate a document.

Ms. Leathers stated Chair Puglisi was correct. It was a special adjustment of plus 5% special salary. She explained what Chair Puglisi was seeing on the class specs is something that is already in the system, so it's based on class specifications. The gray plus 2, has been in place for some time for Custody Staff.

Chair Puglisi stated the difference is when it's listed in the class specs, everyone in that position gets that adjustment. He explained with the plus 5%, only specific people who were approved to get that increase got it.

Ms. Leathers stated that was correct.

Chair Puglisi stated it was important to know the difference because he believed it was relevant.

Ms. Leathers stated yes, that was correct. She continued that she wanted to make sure Keyna Jones and Rachel Baker the Subject Matter Experts that would be able to answer some questions were present for the hearing.

Chair Puglisi responded yes; they were.

Ms. Leathers stated she wanted to call Ms. Rachel Baker as her first witness.

Ms. Baker stated her name and that she was a Personnel Analyst with the Division of Human Resource Management.

Ms. Leathers asked Ms. Baker, the four Grievances being heard, is it her understanding that any adjustments to compensation require a certain level of Appointing Authority of approval, is that statement correct.

Ms. Baker responded that was correct.

Ms. Leathers asked Ms. Baker when referring to the plus 5%, are there specific categories that qualify for a plus 5% salary adjustment.

Ms. Baker responded yes, some categories are frozen and remain frozen. Working out of class, rural pay, any legislatively mandated categories or positions, training, the supervision of 3 or more people, and one of them was the same grade as the person supervising or higher, and those are the ones they have for the special adjustment of pay.

Ms. Leathers asked as the Compensation Subject Matter Expert had she ever seen an Employee have more than 1 plus 5% special salary adjustment.

Ms. Baker responded she had not.

Ms. Leathers stated she had no further questions.

Chair Puglisi asked if the Committee had any questions.

Ms. Russell asked Ms. Baker if there were any Regulations that prevented the Employee from having both plus 5% adjustments to payroll.

Ms. Baker stated she didn't see any, and in that case, it would fall under NAC 284.206.

Mr. Stolk stated the question that was just asked about the Categories, he understood there were only certain Categories to put the plus 5% in, and the Ely group was already in the Category of the rural area plus 5%. In reality, he stated the Agency should have created another Category for recruitment and retention for the plus 5%. He stated from Ms. Bakers testimony they had never seen an Employee have two plus 5%. He understood that answer but that it didn't mean that it couldn't be done. It just meant they hadn't seen it done like that before.

Ms. Baker stated she would refer to Ms. Keyna Jones the Subject Matter Expert from the Payroll Section to ask her if she has seen two plus 5% on one employee.

Ms. Leathers stated all state employees received a cost-of-living adjustment at the beginning of the fiscal year. She continued the plus 5% increase would have been in addition to that cost-of-living adjustment, she wanted to make that clear for those impacted in Ely that would be getting their cost-of-living adjustment plus the plus 5%.

Ms. Leathers called Ms. Keyna Jones as the next witness.

Ms. Leathers asked Ms. Jones if she recalled when NDOC reached out to her beginning of the last fiscal year to discuss how the Agency would process the plus 5% for the Ely State Prison.

Ms. Jones responded she did recall.

Ms. Leathers asked Ms. Jones if she recalled the Agency needed to complete an NPD-5's for each impacted Employee.

Ms. Jones responded yes, that was her understanding.

Ms. Leathers asked Ms. Jones if she recalled if the Agency was able to submit for the plus 5% for employees already receiving the plus 5%.

Ms. Jones responded she didn't recall but how the payroll system worked it wouldn't accept it if it was submitted like that.

Ms. Leathers asked Ms. Jones, how long she had been in the Payroll Department and was she the Central Payroll Manager.

Ms. Jones responded she had been in Payroll for close to 20 years and she had been the Manager for the last 7-8 years.

Ms. Leathers asked Ms. Jones in the time she had been with State Payroll had she ever seen an Employee receive the plus 5% and a second plus 5%.

Ms. Jones responded on rare occasions back before prior Governor Gibbons had frozen the salary adjustments, they would see an Employee receive a plus 5% for example it would be a Bilingual adjustment and then they also may have been working out of class. So the Employee would receive a plus 5% on top of that. It was usually a combination of the two categories together.

Ms. Leathers asked Ms. Jones based on the video that was played from the Legislative Session where this particular budget item was approved, did she happen to hear or identify what the plus 5% would be categorized as.

Ms. Jones responded she did hear her say the "Rural Area".

Ms. Leathers stated in the video that was provided, Ms. Shay did state the adjustment were for the Rural Area adjustment plus 5%.

Ms. Leathers asked Ms. Jones based on the Advantage system the State uses, is the Agency able to put in two-plus 5% pay increases into the system at the same time.

Ms. Jones responded, not using the same pay code grade adjustment for the rural areas. She continued No, the system would not accept the two-plus 5% with the same coding for the adjustment. It wouldn't allow them two entries on one record. It would allow if the adjustment category codes were different, but if they were the same the system would not allow it.

Ms. Lake stated she wanted to know if the Legislative Session intent was for this to be for all Employees across the board at the Ely Facilities or all Custody Staff at the Ely State Prison for purposes of retention and recruitment. There could have been another code provided to use to allow that pay adjustment.

Ms. Jones responded she had done some research in the current payroll system as far as the code was put into place, it was effective in 1999. It was the result of the 1999 Legislative Session. She stated she pulled the testimony related to that session and read what the fiscal analyst at LCB had testified on the adjustment that was going for Ely State Prison. At that time, it was Lovelock, and she wasn't sure if the Board needed more information from the testimony, she could read.

Ms. Lake asked Ms. Jones if it mentioned an additional code or category that could be used and if the Legislative Session had intended it to go for all staff.

Ms. Jones stated the way it was worded in the budget, it was similar to the wording used in 1999. She continued that in 1999 it was worded to cover the 5% increase that covered all staff at the facility to aid in the recruitment and retention of Employees. So, by default, both Lovelock and Ely State Prison were given the plus 5% for rural and were paid through recruitment and retention.

Chair Puglisi asked the Board if they had any questions for Ms. Jones.

Member Beigel asked if the language used in Decision E375 was in the exhibit packets presented for hearing.

Member Beigel stated in the Employer packet she saw E375 was approved but she didn't see the language proposed somewhere in the packet the actual wording used for the Decision E375 to see how it was written.

Member Leathers stated in the Stolk Exhibit 4 in the Employee Packet is the decision E375.

Member Beigel asked Ms. Leathers where did that document come from that is in the Exhibit Packet.

Ms. Leathers responded that she would need to ask Mr. Stolk where he obtained the information in his exhibit packet.

Member Beigel stated she was looking for the language, not a summary, did anyone have access to that information. She stated she didn't feel comfortable if she couldn't read how it was submitted.

Chair Puglisi asked Ms. Lake for closing arguments.

Ms. Lake requested that the Committee side with the Employees and grant them their Grievances. She stated the Grievants believed this plus 5% should have been given to all Custody Staff at Ely State Prison. They believed that NDOC could have corrected this inequity when it occurred. Possibly reaching out to the Legislative group as the Employees did to get answers. If an issue was found it could have been corrected, there had been several IFC hearings that this could have been submitted and corrected or clarified at that time.

Ms. Lake continued that it has now passed over a year, the Employees believe NDOC knew the plus 5% should have gone to all Custody Staff, in early July. Perhaps if the Agency had reached out to the LCB when it was passed if any issues were brought to their attention as the Employees did they wouldn't be where they were. As a result of the testimony and all the evidence submitted, they believed the decision should be in favor of the Employees, at the very least the Committee could make a recommendation to the Legislative Board Committee that this issue is reviewed again as soon as possible.

Ms. Leathers stated the Agency acted in good faith based on the information, the fiscal note, and budgetary information provided at the time NDOC implemented the plus 5% increase adjustment. The Agency had very clear instructions from the Appointing Authority over processing those transactions according to how the budget recommendation was submitted.

Ms. Leathers stated she agreed there should be discussions in the upcoming legislative session on additional special pay categories. When reviewed it is very confusing to say this is a plus 5% increase for a rural pay salary adjustment for all without acknowledging that some of those employees had already been receiving that. The Agency hopes that the Grievants and the EMC will see that the Agency did act in good faith in processing the information they were given with the guidance they were given.

Chair Puglisi stated the Committee would move to deliberations, no comments, or testimony would be allowed unless asked for. The Committee may ask clarifying questions to any of the Participants if they had questions during the deliberations process. The Committee will not go back into arguing the case.

Member Beigel started the deliberations stating she was thinking to deny these Grievances, it seemed when that code was created in 1999 it seemed to cover rural and retention with recruitment in the same fell swoop.

Member Beigel continued she heard the testimony that was submitted from the recording they heard from the Legislative Session, the speaker did mention the rural area and Member Beigel believed that was the intent of the budget approval, that it would go to the rural areas for recruitment and retention. She stated the Custody Staff listed would be given the plus 5% due to working in the rural areas, that is how they maintained the recruitment and retention for those locations.

Chair Puglisi questioned Ms. Leathers on the six different Classifications of Employees listed for NDOC who were intended to receive the plus 5% salary adjustment for retention and recruitment purposes, as she mentioned earlier it was roughly 60 employees, but it was not clear if that included the staff who had already received the 5% or was that the staff who were not getting the increase because they were already given the plus 5%.

Ms. Leathers responded Ely has historically been a difficult place to staff, NDOC as an Agency has struggled the most with custody positions in this area the most. It was her understanding that when this particular decision unit was presented as part of the 2021 budget that it was specific to custody positions because that is where the facility struggled. When reviewing the exhibit by Mr. Stolk it reads Custody Positions, Lieutenant and below for both Ely Conservation Camp and Ely State Prison.

Ms. Leathers stated that was presented and what occurred was the Agency ran a report out of HRDW for what Employees were not already receiving the plus 5% for rural pay. Based on that information, that is how they calculated the budgeted amount and that is how the Agency was able to submit the plus 5% for those who were not already getting it.

Ms. Leathers asked the Chair if that answered his question for clarification.

Chair Puglisi stated in the presentation the dates or timelines were not presented in 2010 unless they were Legislatively mandated everyone's plus 5% was taken away, then around 2017 they were reinstated. He stated it was unclear if they were reinstated how they were taken away and were just added back.

Chair Puglisi stated it was unclear to them when the 5% was added back, did it go to the ones who didn't get it the first time, or was it just given back to the ones who had it before the freeze happened.

Ms. Leathers responded that is what the Human Resources system showed that the people who didn't get the additional plus 5% rural pay adjustment were because they were already been receiving the plus 5% rural pay adjustment.

Chair Puglisi stated the ones that came in after the budget approval was not given the plus 5%, and the ones who were receiving it before the freeze were reinstated with the plus 5% after the freeze was lifted.

Ms. Leathers stated that was correct. Her being new to State Service, coming in at a time when the special pay was added she joined NDOC in December 2016 and the learning the process along the way has been a challenge to figure out why some Employees still received the rural pay of the 5% and why some Employees didn't. The turnover in Human Resources of the Agency has been so high she has not been able to get the answers needed to answer the questions of why some staff got it and not all.

Ms. Leathers stated when the original correspondence was sent out under her name and letterhead, it was sent out on the good faith information she had received from the Fiscal Team based on the Legislative Session approved information and the thought was they wanted to ensure the Employees were aware what kind of pay adjustment they were going to receive.

Ms. Leathers stated she could have been more specific in that communication in saying those who didn't already receive the plus 5%. At the time the communication was put together, that information wasn't available. She continued as she learned more about the process as she was going through these specific grievances being heard, she found new information that she didn't originally have. She stated as the Chief of Human Resources it was her job to ensure, she was communicating accurately the information that she had available at the time.

Ms. Lake stated she wanted to reiterate that the Legislators that were contacted were given all the information including what NDOC's position was regarding the plus 5%, and why it was determined that only certain groups would get it. She stated the State Senators they had spoken with agreed that it should have gone to all Employees, not just some.

Member Thompson stated she was leaning towards sending these Grievances to the IFC and let them determine if they want it to be recruitment and retention or if it should be for rural pay and what is the distinguished answer to have it as either.

Chair Puglisi stated early in the testimony, Mr. Stolk mentioned he didn't think the EMC had the jurisdiction to grant a remedy, but they were asking for the Committee to review the facts and agree with the Grievants that all staff should have been given the plus 5% not just some of them. The Grievants were asking this so they could move forward and get the spot on the IFC's agenda to have it fixed.

Chair Puglisi stated this one was a hard one, as Ms. Leathers mentioned not all the information was available until later in the process. They had a work program and with the best of intentions, testimony with the best of intentions, then nothing became codified. They have only seen the bill summaries which are often put together after a session. Often it takes 2-3 years to have them codified to regulations or to wherever they may fall. He continued it appeared in these cases there was not a lot of background information specifying how it would be codified. In the class specs for Peace Officers or Correctional Officers where there are Legislative adjustments to salary due to the difficulty in recruitment and retention. But in these class

specs, it does outline the special salary adjustments that were approved by the last Legislative Session.

Chair Puglisi asked Ms. Lake if the remedy the Grievants were seeking was if they could go back and adjust it, would it be a plus 5% as a special adjustment, or were they asking for an additional step for these Employees that fall within the class specs that were approved for rural areas.

Member Russell stated she thought a little different than the other members, she thought the Legislative Session would want the special plus 5% to be given to all staff at those facilities not just to some. She thought the Employees should be entitled to it.

Ms. Lake stated in the discussions with the State Senators they asked if they could see that another body as the EMC would review the facts and agree with the Grievants they would be able to move forward. She stated she understood that the decision cannot be to grant a remedy for the Grievants, they would be satisfied to see the EMC didn't have jurisdiction, but the facts were reviewed, and it was determined that there was an error made, the IFC would be happy to add their request to the Agenda to review the remedy which they could grant. She understood the EMC could not rule in their favor because there were some discrepancies to be a special salary adjustment or an additional step, or whatever it was that was decided. The State Senators were clear to the Employees that the bill passed with the intention it would go to all Staff at the Facility and with the way it was worded. It was suggested by Senator Pete Goicoechea that this needs to be looked at to see what the initial intended with the bill. She stated that is all the Grievants were asking at this point was helping to have this reviewed and given to the Employees if that was intended to go to all staff in Ely.

Member Thompson asked if the Committee could hold off on hearing the Grievances and reach out to the IFC and see if that was the intent. If the intent was communicated it might make this clearer. She questioned what they had jurisdiction for.

Chair Puglisi responded to Member Thompson to clarify they would need to place these Grievances in abeyance until they received an answer they were looking for.

Chair Puglisi asked EMC DAG, Mr. Robert Whitney, if this is something the EMC can do, he questioned if it would be something the EMC could place the Grievances in abeyance during the hearing or what that process would be. He stated he didn't think the EMC should be placing the Grievances in abeyance.

Mr. Whitney responded he agreed with Chair Puglisi unless the parties requested the abeyance, it would not be proper for the EMC Committee to grant the abeyance during the hearing. He stated the Grievances would need to be continued from the hearing, then the parties would need to request the abeyance for the time they needed to the EMC Chair. It was noted there was a significant amount of information submitted by the Grievants and Ms.

Lake especially through Mr. Stolk and his Exhibit Packet that does pertain to the Legislative intent.

Member Beigel stated she wanted to reiterate what she stated earlier those 60 plus Employees at the Ely locations that were affected and have been receiving the plus 5% the entire time it is hard to determine without having the wording in the budget approval it is not clear if some Employees will get the plus 5% on top of another plus 5%.

Ms. Lake responded to the earlier question about the Grievances being put into abeyance, she didn't think the employees that work at the Ely locations would not have a problem putting the Grievances in abeyance until some clarification from the Legislature what they determined. She stated she could not communicate with the grievants besides in the group chat, she would like to know if this determination was agreed with the Grievants being heard. She stated that is something they would be willing to do if they agreed.

Chair Puglisi stated before the Grievants respond with the answers, he wanted to make certain that is something the EMC can grant. It was clear who would be doing the legwork for this resolution, he knows it would not be the Committee. If approved this would have to be done by one of the parties that are involved.

Ms. Lake stated they could do it.

Ms. Lake stated they would do the footwork but she would like to have correspondence from the EMC showing the EMC placed the Grievances in abeyance until they could get the decision so it can be sent to the Chairman of that Committee, and she stated they would be happy to do that.

Chair Puglisi asked the Grievants if there was an objection to what Ms. Lake is proposing.

Mr. Stolk stated he wanted it to be clear what it was that they were objecting to or not before they agree to it.

Ms. Lake responded that what she was asking from the Committee is that the Grievances will be requested to be held in abeyance until she was able to have something decided by the committee, the EMC can put something in writing that no determination was made and was agreed to hold the Grievances in abeyance until AFSCME local 4041 reaches out to the Committee to get the Legislative intent.

Mr. Stolk responded the Grievants were ok with that agreement, they just wanted to know the timeline as this has already been tabled for a year. That would be the only reservation they had to agree.

Ms. Lake responded that she could not give a timeline as it was not in her hands to determine the availability of the Committee they needed to seek for an answer. If the EMC gives them a letter stating, no decision was made, and the Grievances will be held in abeyance pending the clarification to the

Legislative intent of the plus 5%. Once the letter is received, she would be able to send the information over to the Chair of that Committee to see about getting the clarification they needed.

Mr. Stolk responded on behalf of the group in Ely, Jacoby, Stolk, Boone-Sharp, and Jones and they agree to this decision.

Member Beigel stated she was ok with this but requested in addition to the clarification they also get the actual wording from the decision unit for E375 when they send their request. She stated if she had the wording the decision unit had written she would be more comfortable deciding. The intent is not always there, it's being intended to be used this way or that way. If they had the wording used, she could understand the verbiage they used to decipher the unintended intent she would feel more comfortable deciding.

Ms. Lake stated she was unclear what it was Member Beigel was requesting from them.

Member Beigel stated she wanted the wording that was used to create the decision. E375 states it was passed by a budget decision unit so there would be wording on how it was proposed versus how it was presented after it passed. They could see there is what was proposed and there was what was passed.

Chair Puglisi stated what they had seen in the hearing was just a snip-it of the summary version of the budget. There was the Agency Budget that further defines with two sentences in the decision unit.

Ms. Leathers stated both members were correct when NDOC originally received the language from the decision unit, that is what was submitted to central records and central payroll to figure out how to process. She continued she was hopeful they would just have to upload it to a spreadsheet instead of having to do 100 + NPD-5 to process all the plus 5% increase. That was based on the language and the interpretation from Central Records and Central Payroll on how to process those.

Chair Puglisi stated in reviewing the Grievances there was a Resolution Conference on this matter and without going into the details of that conference being it was confidential, the Grievants could not agree with the Agency.

Ms. Leathers stated he was correct, she thought it was done sometime in October or November of 2019, it was pre-covid.

Chair Puglisi stated in a recap of the resolve to this was for the hearing that the Representative for the Employees would seek the answers from the Decision Unit E375 to remedy the grievances the EMC would continue the hearings, hold the four Grievances in abeyance until they have that information they need. He continued that Member Beigel requested the language that was proposed with the bill and the intent, once the EMC has those details, they will revisit the Grievances.

Chair Puglisi questioned Mr. Whitney how the process would go during the hearing to grant this remedy, he questioned if it would be the same motion as if they were dismissing the grievance but continue it.

Mr. Whitney stated one of the Committee Members would propose the motion based on what Ms. Lake has said. 284.6957 subsection 2 the Chair or Member of the Committee grants a continuance or request to have the Grievance's held in abeyance if good cause is shown. One of the Grievants parties would make the request and the motion would be the decision that the EMC Committee Chair gives.

Member Beigel questioned if it would be a request and not a motion.

Mr. Whitney responded correctly.

Ms. Lake stated based on the information given by Senator Pete Goicoechea the grievants would need something from the committee stating the EMC agreed and will hold the Grievances in abeyance so the representative or the Grievants could clarify the intent. She continued that the Senator was clear that something from the Committee might be of assistance.

Member Russell asked Mr. Whitney if it would be appropriate based on the circumstances that possibly the EMC Committee send a request to the IFC for clarification. She asked if a subpoena would be needed to request the information the EMC was seeking to get something in writing from them.

Mr. Whitney responded at this point that action might not be appropriate.

Member Beigel stated it might be best to ask Ms. Leathers, it sounds inappropriate to ask the IFC what the budget people were doing when they proposed this bill. The IFC would just be asked is the money available, if not where can it be pulled from.

Ms. Leathers stated she agreed with the request for abeyance for the purposes of getting the answers for the information discussed earlier. The information needed was the intent, and the language used to propose in the decision unit when it was originally presented to the Legislature for approval versus what came out. She continued she would agree to the language proposed and what came out after the decision was reviewed. She stated she has no issue with reaching out to the Legislature to confirm their intent.

Chair Puglisi stated he had a motion ready but wanted to make sure it was clear. Ms. Lake was asking for a directive from the EMC indirectly, asking for this additional information.

Chair Puglisi moved to hold Grievances 6607, 6612, 6620, and 6627 in abeyance until further clarification can be provided by the Legislative Committee approving Decision Unit E375, and how they wanted this codified and processed. He finished with he would include that AFSCME Representative would be seeking this information, not the EMC. He added AFSCME would obtain this information.

Member Beigel stated she would feel more comfortable if the Chair were approving a request to do those items he had listed as opposed to the Chair making a motion.

Mr. Whitney stated that Member Beigel had a good point the actual verbiage of Regulation 695.2 stated that the Chair would grant the request. He continued with an option to use is to put on the record the agreed upon for the motion as good cause to hold the Grievances in abeyance until further clarification could be provided to the Legislative Committee concerning E375 and how they wanted it to be codified or processed. He continued by stating one concern he had was it sounded like from Ms. Lake that to do anything she stated something was needed from the EMC Committee. He was unsure even if granted that it would be enough of what the Grievants needed to get the information they were seeking.

Chair Puglisi responded that he understood a motion was not needed, just a request from one of the parties, the Chair would be approving the request. He wanted the Committee to discuss this before he granted or denied it. He continued when AFSCME feels they have enough information the EMC can resume the Grievances back in the queue to be rescheduled to heard.

Mr. Whitney responded that as soon as Ms. Lake obtains the information needed, she would need to contact the EMC and have the Grievances pulled from abeyance and rescheduled to hear with the obtained information.

Member Beigel questioned would Ms. Lake be given a decision letter and the information that she was seeking with the letter of abeyance that they were requesting. Would that be enough for them to get the information from the State Senator that stated this information would help the Grievants.

Chair Puglisi stated they had a letter for abeyance and could add wording if needed.

Member Beigel stated, they could have the abeyance letter and a copy of the meeting minutes which would list what the Committee was looking for.

Ms. Leathers stated there was a letter for abeyance she has received a copy of for different Grievances.

Member Beigel asked if the request came from Ms. Lake herself or were, they are voting on something that has not been proposed yet.

Ms. Lake responded she was ok with the proposed language as long as the Grievants in Ely were ok, she is having a hard time communicating with them.

Chair Puglisi asked the Ely group who was all in a conference room in Ely calling in for the hearing if they agreed to the language that was proposed.

Mr. Stolk responded yes.

Chair Puglisi stated all parties were in agreement to holding all four Grievances #6607, #6612, #6620, and #6627 in abeyance.

Chair Puglisi granted the request for abeyance requested by Ms. Lake until further clarification can be provided by the Legislative Committee who approved Decision Unit E375, and the intent of how it should be codified or processed.

Chair Puglisi stated the AFSCME Representative Ms. Lake, will be seeking the information she has requested.

Chair Puglisi stated the three Grievants have agreed to send a request to the Committee once the information is obtained. He stated, Ms. Lake will request the Grievances be pulled from abeyance to be rescheduled for hearing once she has the information she requested.

Chair Puglisi granted the request for abeyance for the four Grievances, and a letter would be sent to Ms. Lake within 45 days from this decision.

7. Public Comment

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

8. Adjournment

Chair Puglisi adjourned the meeting at approximately 1:22 pm.