



STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
November 30, 2017

Held at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3138, Carson City, Nevada, and the Grant Sawyer Building, 555 E. Washington Ave., Room 4412, Las Vegas, Nevada, via videoconference and teleconference.

Committee Members:

Management Representatives	Present
Ms. Mandy Hagler-Chair	X
Ms. Pauline Beigel	
Mr. Guy Puglisi	X
Ms. Sandie Ruybalid	X
Mr. Ron Schreckengost	
Ms. Jennifer Bauer	
Employee Representatives	
Mr. Tracy DuPree	
Ms. Turessa Russell	X
Ms. Sherri Thompson	X
Ms. Adria White	
Ms. Sonja Whitten	X

Staff Present:

Mr. Greg Ott, EMC Counsel, Deputy Attorney General
Ms. Nora Johnson, EMC Coordinator
Ms. Zina Cage, Hearing Clerk

1. Chair Mandy Hagler called the meeting to order at approximately 11:00 a.m.
2. **Public Comment**

There were no comments from the audience or Committee Members.

Chair Hagler opened the meeting with committee introductions.

3. Adoption of the Agenda – Action Item

Chair Hagler requested a motion to adopt the agenda.

MOTION: Moved to approve the agenda.
BY: Member Guy Puglisi
SECOND: Member Sonja Whitten
VOTE: The vote was unanimous in favor of the motion.

4. Discussion and possible action related to Motion to Dismiss Grievance #4835, #4855 and #5029 of Bonnie Swadling, Department of Corrections – Action Item

The above-referenced motion to dismiss was heard by the Committee¹ on November 30, 2017. Brandon Price, Deputy Attorney General, (“Mr. Price”) represented Department of Corrections (NDOC), while Ms. Swadling was represented by Jeanine Lake, AFSCME Local 4041, (“Ms. Lake”).

Chair Hagler noted receipt of an employer response to the employee’s response to the motion to dismiss and stated the EMC does not consider replies, as there is no obligation pursuant to law, therefore, the reply would not be entered into the record and was not submitted to the EMC members.

Chair Hagler stated the motions to dismiss and responses were submitted together and will be heard together.

Mr. Price stated Ms. Swadling is employed by NDOC as a psychologist at Southern Desert Correctional Center.

Mr. Price stated Ms. Swadling has an extensive history of filing complaints against NDOC whenever the agency attempts to hold her accountable for her conduct and her work.

Mr. Price stated that would be discussed as it is important to understanding the motions to dismiss.

Mr. Price stated in May of 2009, Ms. Swadling filed an administrative action against NDOC for retaliation under the provisions of NRS 284.641.

Mr. Price stated in that instance, Ms. Swadling claimed NDOC was retaliating against her for speaking out against improper government action. An administrative hearing was held by a Hearing Office on that

¹ The Committee members present at the hearing representing a quorum were as follows: Chair Mandy Hagler (Rsk. Mgmt), who chaired the meeting; Guy Puglisi (DHHS-DWSS), Sandie Ruybalid (DHHS), Turessa Russell (UNLV), Sherri Thompson (DETR) and Sonja Whitten (DHHS) . EMC Coordinator, Nora Johnson and counsel for the EMC, Deputy Attorney General Greg Ott, were also present.

case in October 2015 and Ms. Swadling lost that case. The Hearing Officer ruled Ms. Swadling's retaliation claim had no merit.

Mr. Price stated in 2015, Ms. Swadling filed a lawsuit in Federal court against NDOC and in that complaint, Ms. Swadling claimed NDOC had engaged in a retaliatory and hostile work environment against her.

Mr. Price stated Ms. Swadling's Federal lawsuit was dismissed by the court in March of 2017.

Mr. Price stated on May 30th, 2017, Ms. Swadling filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). In the charge of discrimination, Ms. Swadling alleged she had been retaliated against by NDOC, had been subjected to age discrimination and also subjected to a hostile work environment.

Mr. Price stated Ms. Swadling, in her EEOC charge argued that NDOC took adverse action against her because of the Federal lawsuit Ms. Swadling had filed against the department.

Mr. Price stated in July of 2017 Ms. Swadling also filed the same complaint with the Division of Human Resource Management (DHRM) discrimination unit.

Mr. Price stated that unit did take the case and conducted an investigation. Again, Ms. Swadling alleged she was subjected to age discrimination, hostile work environment and retaliation.

Mr. Price stated in January of 2017 Ms. Swadling filed three separate grievances.

Mr. Price stated in grievance #4835, Ms. Swadling claims she received a written reprimand on December 19th, 2016, and the written reprimand was issued in retaliation for the Federal lawsuit she had filed against NDOC. Ms. Swadling also alleged she was subjected to age discrimination.

Mr. Price stated in that grievance, Ms. Swadling cited Title VII of the Civil Rights Act and the Age Discrimination and Employment Act as the basis for her allegations.

Mr. Price stated these were the same allegations Ms. Swadling made when she filed the complaint with the EEOC.

Mr. Price stated in Ms. Swadling's EEOC charge, Ms. Swadling referenced the written reprimand and the substandard evaluation she had received, also claiming she had been retaliated against for filing the previous lawsuit against the department.

Mr. Price stated in grievance #4835, Ms. Swadling requested the following forms of relief: the written reprimand be rescinded, to require a witness of Ms. Swadling's choosing to be present in all future discussions with her supervisor, Dr. Garofalo.

Mr. Price stated in grievance #4855, Ms. Swadling claimed she received a poor performance evaluation in December of 2016 in retaliation for filing the Federal lawsuit against NDOC.

Mr. Price stated in that specific grievance, Ms. Swadling's proposed resolution was "I want the ongoing harassment, hostile work environment and retaliation from Dr. Roy Hookam and Dr. Michaela Garofalo to cease and desist immediately." Ms. Swadling also requested the evaluation be changed to a 'meets standards' evaluation.

Mr. Price stated in grievance #5029, Ms. Swadling claimed she received another poor performance evaluation in March of 2017, and that the poor performance evaluation was in retaliation for the same lawsuit Ms. Swadling had filed against the department in Federal court.

Mr. Price stated in that grievance, Ms. Swadling's proposed resolution was to "stop the retaliation."

Mr. Price stated pursuant to NAC 284.695(1), the EMC has the authority to answer a request for consideration of a grievance without a hearing if the case is based on the committee's previous decision or if the committee does not have jurisdiction.

Mr. Price stated all three of Ms. Swadling's grievances should be dismissed due to the fact that the committee does not have jurisdiction over these matters.

Mr. Price stated a grievance is defined in NAC 284.658(2) and stated the term grievance does not include matters for which a hearing is provided by Federal law, or is handled using another administrative process within the State.

Mr. Price stated the EMC's Frequently Asked Questions (FAQ's) also provides that grievances do not include complaints of harassment and discrimination.

Mr. Price stated all three of Ms. Swadling's grievances are based solely on allegations that she was subjected to discrimination, retaliation and a hostile work environment.

Mr. Price stated those complaints were filed with State DHRM and also filed with the EEOC, and those specific agencies have the expertise to handle these types of complaints.

Mr. Price stated complaints of hostile work environment, retaliation and discrimination are complicated legal issues and the agencies mentioned are the agencies equipped to handle these complaints.

Mr. Price stated that because Ms. Swadling's grievances have already been reviewed by other agencies, it is not proper for the EMC to consider Ms. Swadling's grievances.

Mr. Price stated if the EMC did hear Ms. Swadling's grievances, it would run the risk of creating inconsistent results, with DHRM or the EEOC making one decision, and the EMC making an opposite determination.

Mr. Price stated another reason the matters should be dismissed is the EMC has stated in prior decisions, that it will not entertain grievances like this that are based on allegations of harassment and/or discrimination and cited the Eric Mishel decision and the Brian Bowles decision.

Mr. Price stated two of Ms. Swadling's grievances should also be dismissed without a hearing because the EMC cannot grant the relief requested by Ms. Swadling.

Mr. Price stated the EMC's authority is limited by statutes and cited NRS 284.073.

Mr. Price stated one of Ms. Swadling's request for relief is that Ms. Swadling be allowed to have a representative with her at all times when she has interactions with her supervisor, and stated there is no legal authority that the EMC has to order NDOC to provide that to Ms. Swadling.

Mr. Price stated that requiring that type of relief would affect operations and is not feasible in a working environment.

Mr. Price stated in grievance #5029, Ms. Swadling asked that Dr. Garofalo be placed under investigation, and again, that is not something the EMC has the authority to order.

Mr. Price stated NDOC acknowledges the EMC is generally allowed to hear grievances related to written reprimands or poor performance evaluations, but in a case like this, where a grievant also files the complaint in another agency such as the EEOC and DHRM, that immediately strips the EMC of any jurisdiction to hear the matter.

Mr. Price stated if the EMC is so inclined to hear these grievances, NDOC requested the grievances be held in abeyance, or the EMC issues a stay until the EEOC has an opportunity to fully investigate the matter, issue its decision, and if there is any potential lawsuit that could arise from the matter, the EMC hearings should be held in abeyance until those are concluded.

Mr. Price stated we rely on the arguments that were set forth in the motions to dismiss and NDOC requested all three of Ms. Swadling's grievances be dismissed without a hearing.

Mr. Price concluded his opening statements.

Chair Hagler opened to floor for Ms. Lake's opening statements.

Ms. Lake stated Ms. Swadling filed the three grievances with one having to do with a written reprimand and two others having to do with below standard evaluations.

Ms. Lake stated Ms. Swadling responded to the written reprimand, and clearly indicated her objections to the reprimand at that time.

Ms. Lake stated Ms. Swadling then followed through with the formal grievance because nothing was done about the reprimand.

Ms. Lake stated in her grievances, Ms. Swadling specifically requested the resolution to be the removal of the written reprimand from any and all of her personnel files, and the committee does have jurisdiction to do that.

Ms. Lake stated the EMC has jurisdiction over grievances of reprimand, and the committee can also deny or refuse to rule on any portion of a proposed resolution that Ms. Swadling put forth.

Ms. Lake stated the fact that the department responded to the grievance during each step of the grievance process, and chose not to meet with Ms. Swadling at any point along the way is very telling.

Ms. Lake stated instead, the grievances have gotten to this level and the agency filed motions to dismiss.

Ms. Lake stated the matters of performance evaluations are also clearly within the purview of the committee.

Ms. Lake stated in both instances of the evaluations, Ms. Swadling submitted written rebuttals to the grievances and requested reviews and that never happened.

Ms. Lake stated that the grievances were filed to protect Ms. Swadling's timelines.

Ms. Lake stated the matters of the performance evaluations is troubling to Ms. Swadling because those are documents that will remain in her personnel file forever.

Ms. Lake stated the grievance process is the process given to State employees, in the State system, that if you have a review, and nothing is changed, employees' have the right to a formal grievance.

Ms. Lake stated Ms. Swadling asked for documentation from her supervisor throughout the grievance process and in her written responses, to clearly see where she failed to attain a standard rating in any specific job element listed.

Ms. Lake stated Ms. Swadling took issue with the fact that her supervisor failed to make any favorable comments about her in the evaluations.

Ms. Lake stated there were no responses to any of Ms. Swadling's concerns, requests for review or issues raised in the grievance process.

Ms. Lake stated Ms. Swadling has filed a charge of discrimination with the EEOC, that is not being disputed or ignored, but that case is pending.

Ms. Lake stated the arguments for the cases to be heard are very simple. The matters of work performance, evaluations and written reprimands are absolutely within the purview of the EMC.

Ms. Lake stated Ms. Swadling may have worded her grievances as retaliatory action, however, Ms. Swadling absolutely felt that when she filed the grievances.

Ms. Lake stated Ms. Swadling would explain why she worded the grievances the way she did.

Ms. Lake stated Ms. Swadling was unable to have anyone within her department review her requests for evaluation reviews, was unable to have anyone intervene between her and her supervisor in the ongoing issues that led to the written reprimand.

Ms. Lake stated that is way Ms. Swadling was frustrated and felt she was being retaliated against for having to file with the EEOC.

Ms. Lake asked (rhetorically) could Ms. Swadling have filed her grievances without referencing the EEOC, and stated yes, she should have and probably would have had she known.

Ms. Lake stated what should not be forgotten is MS. Swadling has two below standard evaluations and a written reprimand the department feels should be dismissed without merit and to say that the EMC has no jurisdiction.

Ms. Lake stated that is not only unfair to Ms. Swadling, it is a clear attempt to thwart the employee's right to have a hearing before this committee.

Ms. Lake stated the previous lawsuit and complaint being referenced in the arguments for dismissal in the testimony from Mr. Price indicate a previous harassment complaint and discrimination complaint filed with the EEOC in 2009.

Ms. Lake stated this does not show a pattern from Ms. Swadling, that seven or eight years later she has a complaint against a supervisor.

Ms. Lake stated that is the process that is available to employees and that is the process that Ms. Swadling chose.

Ms. Lake stated employees have the right under the law to file any complaint or grievance when they believe an injustice has been done, and win or lose, that is the process.

Ms. Lake stated in the EEOC charge, the references to the reprimand and evaluation, Ms. Swadling did put those in her EEOC charge.

Ms. Lake stated Ms. Swadling was frustrated and the timing of everything is very key and Ms. Swadling will testify to that.

Ms. Lake stated in the department's reply, and Ms. Lake understood that was not being considered, however, Mr. Price brought it up, if any decision by the committee, should the committee rule to hear this case, that the cases should be held in abeyance pending the outcome of any lawsuit or EEOC conclusion and why wasn't that consideration given for this hearing today.

Ms. Lake asked (rhetorically) why these cases were not being held in abeyance and any decision from this committee regarding these grievances be held, period.

Ms. Lake stated Ms. Swadling would address why she wrote the grievances the way she did, and why Ms. Swadling feels the grievances should be heard by the EMC.

Chair Hagler asked if Mr. Price had objections to Ms. Swadling presenting why she filed the grievances the way she did.

Mr. Price stated the grievances speak for themselves.

Mr. Price stated if Ms. Swadling was going to get into the underlying facts of her grievances, he would object to that, as this hearing was to address the legal arguments of the motions to dismiss.

Mr. Price reiterated his objection to Ms. Swadling discussing any facts pertaining to the grievances.

Chair Hagler asked Ms. Lake if she was ok with Mr. Price's stipulations.

Ms. Lake stated she was and that Ms. Swadling was not going to address the underlying facts of the grievances, Ms. Swadling was going to address the timeline and why her grievances were worded the way they were.

Chair Hagler stated this was a motion to dismiss, not a hearing and cautioned Ms. Swadling not to argue the cases.

Ms. Swadling stated she filed the grievances approximately two weeks after the federal depositions took place, as that was when Ms. Swadling felt the retaliation began.

Ms. Swadling stated she has never had a below average evaluation in her thirteen years with NDOC.

Ms. Swadling stated she felt at that time, she needed some answers and began the grievance process.

Ms. Swadling stated she asked what was going on, never received any answers from her supervisor and began the grievance process.

Ms. Swadling stated she had to word the grievances the way she did because it came two weeks after the Federal depositions were taken from her supervisor and herself.

Mr. Price requested to offer a reply argument and Chair Hagler agreed.

Mr. Price stated Ms. Swadling, in her testimony, provided support for the argument for the motions to dismiss.

Mr. Price stated Ms. Swadling's grievances are not about the circumstances surrounding whether or not Ms. Swadling has satisfied her job duties with respect to certain elements in her evaluation, Ms. Swadling's grievances are about a continuation of her Federal lawsuit and alleging retaliation, discrimination and hostile work environment against NDOC.

Mr. Price stated Ms. Swadling would not suffer any unfairness if the EMC does not hear this matter as she has an EEOC complaint pending with a Federal agency who is going to conduct an investigation and ensure that Ms. Swadling's rights on this matter is heard.

Mr. Price stated once Ms. Swadling filed the EEOC complaint, it divested any jurisdiction the EMC may have had on the case.

Mr. Price reiterated Ms. Swadling will not suffer any injustice because her complaint will be heard.

Mr. Price stated when you compare Ms. Swadling's grievances to the EEOC complaint, Ms. Swadling's allegations are exactly the same, and

those being Ms. Swadling was subjected to retaliation and a hostile work environment due to the Federal lawsuit.

In response to Ms. Lake's argument that she did not understand why it was not requested to this hearing in abeyance, Mr. Price stated NDOC firmly believes the EMC no longer has jurisdiction to hear this case at all.

Mr. Price stated the request for abeyance is an alternative argument and if the EMC is inclined to hear the matter, the EMC should do so after the EEOC and DHRM investigations, and any lawsuit has concluded so there are no inconsistent results in this matter.

Mr. Price stated with that, NDOC submitted the motions to dismiss and request the EMC dismiss the grievances without a hearing.

Chair Hagler opened committee deliberations regarding the motions to dismiss and stated that while the committee has read the packets, there would be some time to allow the committee to review the packets and process the testimony presented by both parties.

Member Puglisi stated having reviewed the three motions to dismiss and the other two grievances on the agenda, it was difficult to ascertain what the issues are without copies of the written reprimand or the performance appraisals.

Member Puglisi stated if the case did move forward to hearing, the scope should be limited to arguments regarding the written reprimand and reports on performance.

Member Puglisi stated the EMC did have complete jurisdiction over a 'does not meet standard' report on performance, as well as a written reprimand.

Member Puglisi stated based on the multiple grievances, this would most likely be two or three reports on performance and one written reprimand and stated the EMC should deny the motions to dismiss and move forward with one hearing that strictly addresses the written reprimand and reports on performance that are 'does not meet standard, and/or if any statements within the evaluations are contested.

Member Witten inadvertently offered a second as Chair Hagler noted that Member Puglisi's statement was not actually a motion.

Member Puglisi stated he was not making a motion, rather offering a discussion point for the committee to make any comments.

Chair Hagler asked if other committee members had any points to discuss.

Member Thompson stated she agreed with Member Puglisi and felt this case was something the EMC should hear.

Member Whitten stated she agreed and that the committee should hear the written reprimand and the evaluation portion.

Member Russell stated she was also in agreement.

Member Ruybalid stated she agreed as well, but that it needed to be limited to the evaluation and written reprimand.

Member Ruybalid asked how committee should address the abeyance question.

Chair Hagler stated the abeyance question could be addressed in the motion.

Chair Hagler stated she had some concerns with the grievance being filed in another forum and cited NAC 284.696, stating NAC 284.696 allows a grievant to file in one or the other and does not allow a grievant to file in both.

Chair Hagler stated in the grievance packet, the charge of discrimination, Ms. Swadling referenced in both the grievance and the EEOC complaint.

Chair Hagler stated there was some issue as to how the EMC would address allowing part of the grievance to go forward when 284.696 prohibits it, stating issues are filed as either a grievance, or issues are filed in the Federal venue.

Chair Hagler asked if there were any comments from the committee.

Member Puglisi stated he understood the concern about 'venue shopping', however, the grievances specifically rebutted the reports on specific performance.

Member Puglisi stated whether or not there was a valid issue with discrimination, retaliation or hostile work environment, setting that completely aside, if the performance appraisals have been contested, the EMC could look at that piece separately.

Chair Hagler stated part of Ms. Swadling's complaint filed with the EEOC specifically references the written reprimand and 'does not meet standard' evaluation as part of her complaint against the employer.

Chair Hagler stated her concern is the EMC has already had a decision with Brian Bowles where part of the discussion was Mr. Bowles filed a complaint in another venue and then filed a grievance.

Chair Hagler stated the concern was the EMC may set a precedence where the EMC would be going against a Nevada Administrative Code by allowing employees' to file in two different venues, against what the NAC states.

Member Puglisi asked which packet the Brian Bowles decision was in.

Chair Hagler stated it was in the agency's motion to dismiss packet for grievance #4835, page two of four in the exhibits.

Mr. Price stated if the committee would like, NDOC could offer some clarification on the issue of whether or not it would be feasible to hear one without the other.

Chair Hagler stated at this time, the committee was comfortable but may come back to that offer if necessary.

Member Puglisi stated the Bowles decision revolved around a light duty requirement and was a possible ADA issue and the employee felt discriminated against by the agency not providing a light duty assignment.

Member Puglisi stated he had trouble comparing that issue to Ms. Swadling's scenario.

Chair Hagler stated the scenarios were not similar, but the crux of discrimination is similar.

Chair Hagler stated Ms. Swadling is claiming harassment, retaliation, age discrimination of which Ms. Swadling has filed in the Federal forum and Ms. Swadling was saying the written reprimand and performance evaluations were done directly in retaliation as well for her already filing the retaliation.

Chair Hagler stated Ms., Swadling had already brought the issues forth in another venue and now wants to bring the issues to the EMC venue.

Member Puglisi stated in regards to the abeyance that was brought up, maybe that complaint should be satisfied first and if it is not resolved to the grievant's satisfaction, the EMC could review the disagreement with the reprimand and reports on performance as they stand alone, outside of the other allegations.

Chair Hagler asked if any other members had any points of discussion.

Chair Hagler stated she understood Member Puglisi's point but that would allow employees' to file in different venues on the chance the employees' would not get the resolution they are seeking, this would allow for a backup plan to go into a different venue.

Chair Hagler stated NAC 284.696 prevents that, NAC 284.696 does not state 'and', it states 'or'.

Member Thompson stated the EMC should hear this, as long as the grievant knows it would be limited to the evaluations and the written reprimand only, no harassment piece.

Member Ruybalid stated she disagreed based on NAC 284.696 and the crux of the complaint is Ms. Swadling received a below standard evaluation as a retaliatory measure to filing a complaint in another venue.

Member Ruybalid stated based on NAC 284.696, the EMC did not have jurisdiction in this instance, even though the EMC does usually have jurisdiction over evaluations and written reprimands, the fact that Ms. Swadling has filed in another venue for that purpose, may not allow the grievances to go to hearing.

Member Whitten stated that separating the harassment and retaliation, leaving that in the Federal court, would leave the EMC with the ability to look at the written reprimand, as well as the evaluations complaint as she felt these are two separate issues.

Member Russell stated her recommendation would be deny the motion to dismiss and place a hearing in abeyance until the other venue hears the specifics regarding the evaluation and the written reprimand.

Member Russell stated whether or not the grievant gets a satisfactory outcome, but whether or not the other venue deals specifically with these issues.

Chair Hagler stated Ms. Swadling specifically cited her written reprimand and 'does not meet standard' evaluation in her EEOC complaint.

Chair Hagler stated the grievance process through the EMC does allow the committee to hear issues regarding written reprimands and 'does not meet standard' evaluations and if that were just the case, there would be no problem with NAC 284.696, but because Ms. Swadling is mentioning them in both venues.

Chair Hagler stated in her EEOC case, Ms. Swadling is not talking about retaliation, but in the EMC complaint, it is all about retaliation which is why Ms. Swadling received the written reprimand and the 'does not meet standard' evaluation, which again, has been filed in another venue and is citing the same thing.

Chair Hagler stated that is why it would be difficult to separate the issues because Ms. Swadling is going to argue in the EEOC forum that she should not have received those, and if that outcome is not favorable, Ms.

Swadling will come back to the EMC and have another venue to argue she should not have received them.

Chair Hagler stated NAC 284.696 was specifically set up to not allow employees to do that.

Member Puglisi stated there was a new statute and NAC that discusses removal of an ineligible grievance from the grievance process.

Member Puglisi stated the EMC continues to see grievances like this and if these grievances are ultimately ineligible for the grievance process, he would ask DHRM to take a look at that so the EMC is not faced with ineligible grievances.

Chair Hagler stated she agreed and that was put in specifically for those types of grievances to be removed from the grievance process.

Chair Hagler stated it was duly noted, and would ask that DHRM take a closer look at the NAC that allows for grievances to be removed.

Chair Hagler asked if Ms. Denise Woo-Seymour, Personnel Analyst, (DHRM), would like to address that issue.

Ms. Woo-Seymour stated removal of a grievance can be applied at steps #1, #2 or #3, but the request has to be submitted by the agency.

Ms. Woo-Seymour stated DHRM would not take it on to freely review grievances.

Chair Hagler stated the committee was not aware that was how the process worked, and requested the regulation book to review.

Member Puglisi stated the three grievances for the motions to dismiss and the other two agendized grievances were all similar in nature and asked if it was too late to consider them all, and consider the agendized two after the three motions to dismiss were resolved.

Chair Hagler stated the committee would hear the motions to dismiss for the three grievances and the other two agendized items would be heard together, as a committee and determine whether or not the committee has jurisdiction to move the grievances to hearing.

Chair Hagler asked if there was any other discussion regarding the motions to dismiss or if the committee was ready to make a motion on the motions to dismiss for grievance #4835, #4855 and #5029.

Member Whitten moved to deny the request to dismiss grievance #4835, #4855 and #5029, as she felt the committee does have jurisdiction to hear the grievance complaint regarding the written reprimand and the performance evaluation.

Mr. Ott stated because Mr. Price made alternative requests, one regarding the lack of jurisdiction and one regarding holding the grievances in abeyance, it would be helpful for drafting the decisions if the abeyance was addressed as well.

Chair Hagler asked Member Whitten to restate the motion.

Member Whitten requested additional clarification as to what was needed in the motion.

Mr. Ott stated if the motion is to deny the motions to dismiss, then the grievances would move forward and the clarification is, would the grievances move forward without the abeyance request by the employer, or will the grievances move forward with the abeyance.

Chair Hagler stated that when Member Whitten made a motion, the motion needed to state whether the EMC would hold these grievances in abeyance until the other venues and other investigations have been completed, or move the grievances forward to hearing regardless of the other investigations.

Member Whitten stated she would like to amend the motion to state the motions to dismiss are denied and the EMC decisions are held in abeyance until the other venue makes a determination.

Chair Hagler restated there is a motion to deny the motions to dismiss for grievance #4835, #4855 and #5029, with the hearings being held in abeyance until the other investigations are completed.

Member Thompson seconded the motion.

The vote was Member Thompson, Member Russell and Member Whitten in favor, Member Ruybalid, Member Puglisi and Chair Hagler opposed and therefore ended in a tie vote.

Chair Hagler stated when there is a tie vote, motions to dismiss are granted and the vote goes to the agency.

Chair Hagler stated there was a need for clarification from Mr. Ott.

Mr. Ott stated the Chair was correct, at the hearing stage, when there is a motion to adjust a grievance and it ties, that motion fails because it hasn't gotten a majority so the grievance fails to be adjusted.

Mr. Ott stated in the motion to dismiss phase, the motion that was offered failed to get a majority so that motion has failed.

Mr. Ott stated in order to grant the motion to dismiss, there would have to be a motion that would carry a majority to grant the motion to dismiss, otherwise, the motion won't be granted.

Mr. Ott stated the committee has taken no action. There was a motion but the motion failed, there could be another motion and further deliberation, but the motions do not get granted, without a motion to grant them.

Chair Hagler stated the motion by Member Whitten had failed and opened the committee for further deliberation or a new motion.

Member Ruybalid moved to grant the motions to dismiss based on NAC 284.696, these grievances have been filed in another venue so the committee lacks jurisdiction.

Member Puglisi seconded.

The vote was Member Ruybalid, Member Puglisi and Chair Hagler in favor, Member Thompson, Member Russell and Member Whitten opposed and therefore ended in a tie vote.

Chair Hagler stated that motion failed as well and the committee may have to go back to deliberations.

Member Ruybalid stated as Member Puglisi said, there are five grievances that all center on performance evaluation and a written reprimand and there are two other grievances on the agenda to discuss,

Member Ruybalid stated if the motions to dismiss were granted, there are still two grievances that have not been discussed, and Member Ruybalid stated the outcomes may not be different.

Chair Hagler stated the two agendaized grievances are the same complaints and also have the same complaints of retaliation and discrimination.

Chair Hagler stated the committee should consider the motions to dismiss first before moving to the agendaized items.

Chair Hagler stated the committee could entertain holding the motions to dismiss in abeyance, without going to the agendaized items.

Chair Hagler stated the committee could also entertain a motion to hold the motions to dismiss in abeyance until the conclusions of the other investigations and get a decision of the table of the employer and the grievant.

Member Puglisi moved the motions to dismiss for grievance #4835, #4855 and #5029 be held in abeyance until the decision is made in the other venue.

Chair Hagler restated there was a motion to hold the motions to dismiss of grievance #4835, #4855 and #5029 in abeyance until the conclusion of the investigations from the other venues.

Member Whitten seconded.

The vote was five to one in favor, with Member Ruybalid voting against.

Chair Hagler stated with that, the motion carries to hold the motions to dismiss for grievance #4835, #4855 and #5029 in abeyance until the conclusion of the other complaints that have been filed.

MOTION: Move the motions to dismiss grievance #4835, #4855 and #5029 be held in abeyance pending the outcomes of other venues.

BY: Member Guy Puglisi

SECOND: Member Sonja Witten

VOTE: The vote was five to one in favor, with Member Ruybalid voting against.

Chair Hagler stated she would ask the employer to notify the EMC when those outcomes have been completed.

Mr. Price requested clarification that the grievances will remain off calendar until the motion is reheard.

Chair Hagler stated that was correct.

5. Discussion and possible action related to Grievance #5147 and Grievance #5152 of Bonnie Swadling, Department of Corrections – Action Item

Chair Hagler opened the committee for discussion.

Member Puglisi asked if a motion could be made to combine grievance #5147 and #5152 with the other three, hold them in abeyance and hear them all together.

Mr. Ott stated the committee could move to continue these two items to be along the same timeframe as the other three items.

Member Puglisi moved to hold grievance #5147 and #5152 in abeyance and any future consideration calendared be together with grievance #4835, #4855 and #5029.

Member Ruybalid seconded.

MOTION: Move to hold grievance #5147 and #5152 in abeyance, and any future consideration be together with grievance #4835, #4855 and #5029.

BY: Member Guy Puglisi

SECOND: Member Sandie Ruybalid
VOTE: The vote was unanimous.

6. Public Comment

There were no comments from the audience or Committee Members.

7. Adjournment

Chair Hagler adjourned the meeting at approximately 12:14 pm.