

1 STATE OF NEVADA

2 EMPLOYEE-MANAGEMENT COMMITTEE

3 MEETING TRANSCRIPT

4 SEPTEMBER 09, 2021

5

6 S. PARKER: Sorry. I'm gonna start again. We started  
7 the meeting at 9:02. We'll restart at 9:05, due to some  
8 technical difficulties. Calling the EMC meeting to order,  
9 Thursday, September 9th, 2021. Two locations, Nevada State  
10 Library and Archives in Carson City and the Grant Sawyer  
11 Building in Las Vegas. This is in-person meeting, and we will  
12 comply with the governor's mandate of social distancing and  
13 mask wearing, above the nose and below the mouth for all  
14 individuals, whether vaccinated or not vaccinated. The sites  
15 are connected by video conference. Um, microphones and ca --  
16 and cameras in Northern Nevada are in -- up -- up in top, at  
17 the middle of the room. I'll ask everybody to speak loud,  
18 clear, especially since we're wearing masks. Um, if you need  
19 to speak, you need to ask for acknowledgement. Once I  
20 acknowledge you, then you can actually speak. You'll need to  
21 identify yourself and always face the cameras. That's the only  
22 way that we can see Las Vegas and that Las Vegas can actually  
23 see us. And this will pertain when witnesses are sitting up at  
24 the tables, as well. Um, emergency evacuations -- I've covered  
25 Northern Nevada. We'll follow northern, uh, Nora out, either

1 to the West Courtyard or east, across the street, in case of  
2 an evacuation, depending upon the circumstance. Las Vegas, can  
3 you give your emergency evacuation instructions?

4 DAVIES: In the event of an emergency we will scarper  
5 out that door, hang a left t -- to the outside, and breathe  
6 the hot, molten air that we have down here.

7 S. PARKER: I know. I'm so sorry. Thank you, Co-Chair  
8 Davies. Um, so we're gonna go ahead and get started. First I'm  
9 gonna start with public comment.

10 DAVIES: We have nobody at the South.

11 S. PARKER: Oh, okay. And, um, in Northern Nevada?  
12 Okay. And I forgot to tell you, no voter action may be taken  
13 upon a matter raised during public comment anyway, until the  
14 matter itself has been specifically included on an agenda item  
15 upon which action may be taken. Comments will be limited to  
16 five minutes per person. And persons making comment will be  
17 asked to begin by stating their name for the record. So, one  
18 call again, no public comment being heard? I have to look over  
19 there too to see if they're raising their hand. Okay. So we'll  
20 go ahead and move on to item number three. We'll just start  
21 with committee introductions, and then we'll go over meeting  
22 overview and for updates. We'll start in Southern Nevada,  
23 please.

24 DAVIES: Morning, Madam Chair. I'm Gwyn Davies. I work  
25 for the Department of Motor Vehicles.

1 WEISS: Good morning, uh, Madam Chair. Todd Weiss. I'm  
2 from the Nevada Attorney General's Office.

3 WRIGHT: Good morning. Ivory Wright, EMC Clerk.

4 VEHOOR: Good morning. Rhonda Vehoor (phonetic), Agency  
5 HR Services Personnel Officer.

6 S. PARKER: And then let's go, um, to Teams. We'll  
7 start with, um, you, Mary Jo.

8 SCOTT: Morning everyone. Mary Jo Scott. I work for the  
9 Governor's Finance Office, Office of Project Management,  
10 Department (phonetic) 21, Personnel Officer, HRD.

11 BAUER: Jennifer Bauer, State Public Charter School  
12 Authority.

13 S. PARKER: And Stephanie Parker, uh, UNRNSHE  
14 (phonetic) and committee Chair.

15 JOHNSON: Nora Johnson, Interim, EMC Coordinator, DHR.

16 S. PARKER: Okay. And then, just so people know, who's  
17 on the -- on the, um, Teams here. Carrie Parker (phonetic), do  
18 you wanna introduce yourself?

19 C. PARKER: Good morning. Uh, Deputy Attorney General,  
20 Carrie Parker, on behalf of the Department of Transportation.

21 S. PARKER: Okay. Awesome. Great. Anybody else? Okay.  
22 So, um, we're here today. I'm -- I'm just going to give, uh,  
23 an overview of what to expect today. But we're going to, oh,  
24 no. Yeah, I am. Okay. When we get to the grievance process,  
25 uh, everybody's received scheduling orders, that is here to

1 meet today. Each party, um, will be allowed up to one hour, at  
2 the discretion of the chair, to present his or her matter.  
3 Committee members may ask questions during any of the phases  
4 to ensure they understand the presentations. And I'll go over  
5 this, again before we start. Okay? Um, then we'll go through a  
6 series of presentations from the parties themselves,  
7 bereavement (phonetic) and the agencies, and, um, no matter  
8 what the -- the particular cause is. If -- during hearings,  
9 committee members will deliberate and they'll, you know, they  
10 may ask additional questions to determine. And then, decisions  
11 are made within 45 days after this hearing. Okay? You'll  
12 receive the -- that information. Um, let's see here. So I'm  
13 gonna go onto item number four, adoption of the agenda.

14 DAVIES: Madam Chair. This is Gwyn, for the record.

15 Motion to adopt the agenda.

16 S. PARKER: Thank you.

17 BAUER: Ms. Chair, Jennifer Bauer, I second.

18 S. PARKER: Awesome. Is there any discussion? And I'll  
19 call for a vote. All in favor?

20 COMMITTEE MEMBERS: Aye.

21 S. PARKER: Awesome. Any opposed? You all said aye,  
22 so, so moved. So we will go on to item number five, approval  
23 of the minutes for the October 1st meeting.

24 BAUER: Ms. Chair, this is Jennifer Bauer. Oh, I move  
25 to adopt, or approve.

1 DAVIES: Ms. Chair, this is Gwyn. I second.

2 S. PARKER: Okay. We've got a first and a second. Any  
3 discussion? All those in favor say aye.

4 COMMITTEE MEMBERS: Aye.

5 S. PARKER: Okay. That was unanimous. And so, so  
6 moved. We'll move on to the next item. Approval of the June  
7 15th, 2021 meeting minutes. Uh, anybody ha -- uh, like these  
8 pulled for any discussion, or I'll entertain a motion?

9 BAUER: Ms. Chair this Jennifer?

10 S. PARKER: Yes?

11 BAUER: I move to approve.

12 S. PARKER: Awesome. We've got a first.

13 DAVIES: Ms. Chair, this is Gwyn. I'll second.

14 S. PARKER: Any discussion? All those in favor?

15 COMMITTEE MEMBERS: Aye.

16 S. PARKER: Awesome. That was unanimous. So we'll --  
17 so that's moved. Awesome. Groovy. We're gonna move on to  
18 number seven, which is the motion to dismiss for grievance  
19 number 7085, for Bar -- Barron -- tell me if I'm saying that  
20 right -- Santiago --

21 SANTIAGO: Yes, ma'am.

22 S. PARKER: Uh, submitted by the Department of  
23 Transportation. So he -- who's here for the Department of  
24 Transportation?

25 C. PARKER: Good morning, Madam Chair, members of the

1 committee. My name is Deputy Attorney General Carrie Parker. I  
2 represent the Department of Transportation. I have with me  
3 representatives from the Department of Human Resources,  
4 including Allison Wall (phonetic) and Mary Gordon (phonetic).

5 S. PARKER: Awesome. Okay. So I guess I need to do  
6 swearing in. All right. Okay. So I am -- thank you for that. I  
7 am gonna do a swearing in. Uh, where is it? Okay. And -- of  
8 the witnesses, so, uh, that are here to speak. So I'll need  
9 you to, uh, both answer either yes or no when I ask this  
10 question. Do you swear to tell the truth and nothing but the  
11 truth?

12 MULTIPLE INDIVIDUALS: Yes.

13 S. PARKER: Thank you, all. Um --

14 BAUER: Ms. Chair, this is Jennifer. May we have the  
15 names of the witnesses?

16 S. PARKER: Sure. Can you just say your name and your  
17 affirmative response? (Inaudible) -- starting with her two  
18 witnesses that she actually mentioned -- that Carrie Parker --  
19 this is -- this is what we're hearing to -- right now.

20 C. PARKER: Um, Madam Chair?

21 S. PARKER: Yeah?

22 C. PARKER: I'm sorry. Um, Ms. Wall and Ms. Gordon are  
23 client representatives. I -- I don't anticipate calling them  
24 as witnesses.

25 S. PARKER: Okay.

1 C. PARKER: They're just here as -- as department, um,  
2 representatives.

3 S. PARKER: Oh, so they will not be speaking?

4 C. PARKER: I don't believe so. I don't anticipate  
5 that, Madam Chair.

6 S. PARKER: Because if I don't swear them in, they --  
7 they won't be speaking.

8 C. PARKER: Okay. I wasn't anticipating calling them.  
9 Um, I named some gentlemen in the pre-hearing statement, um,  
10 for when we reached the grievance process, if we reached that  
11 process. But for this agenda item, I don't have any witnesses,  
12 Your Honor.

13 S. PARKER: Okay. Thank you. Thank you so much.  
14 Awesome. So, okay, then we will move on. So what I'm gonna do  
15 is ask you to go ahead and present your case, uh, which is a  
16 motion to, just to dismiss. this is not the actual grievance  
17 itself. Just so that everybody's clear on that. The agency is  
18 asking for us to dismiss that, and that's what she'll be  
19 presenting. Okay. So go ahead and present. Thank you.

20 C. PARKER: Okay. Thank you, Madam Chair. Again. I  
21 would like to, um, thank you for allowing me to appear  
22 virtually. Um, I really appreciate it. As a preliminary  
23 matter, I noticed that Mr. Sant -- I'm sorry. I didn't think  
24 that was gonna happen. As a preliminary matter, I noticed that  
25 Mr. Santiago's response to the motion, um, to dismiss,

1 attached a motion to dismiss dated August of 2020. Um, my  
2 understanding from the ENT (phonetic) coordinator was that the  
3 August motion was not considered filed last year, because the  
4 matter had not been set for a hearing. So NDOT had withdrawn  
5 that motion, and we filed a revised motion in July. Uh, and we  
6 submitted that and served Mr. Santiago a copy. Um, so I just  
7 wanted to confirm that we're all talking about the same  
8 motion, uh, which is the July 2021 motion. Mr. Santiago did  
9 file a response after the July motion. Um, I just wanted to  
10 confirm we're all talking about the same motion.

11 S. PARKER: Okay, so what I'm looking at here is dated  
12 from August 6th, 2021. Hold on a sec.

13 DAVIES: Madam Chair. Uh, it's Gwen, for the record. The  
14 motion I have in front of me is, respectfully submitted, this  
15 date, 28th day of July 2021.

16 BAUER: Mr. Chair, this is Jennifer. I'm looking at the  
17 same as Gwyn.

18 S. PARKER: Okay. Oh, that was -- yeah.

19 UNIDENTIFIED: Ms. Chair, the motion is, um, on cleaning  
20 (phonetic) paper.

21 S. PARKER: Okay. Okay. Okay. That -- we've got that.  
22 Thanks.

23 C. PARKER: Okay. Uh, thank you, Madam Chair. Um, in  
24 his response, Mr. Santiago complained about the specificity of  
25 charges having been attached. And I wanted to explain why the

1 Department of Transportation attached the specificity of  
2 charges and the other appeal paperwork, (inaudible) as a  
3 general procedural background. Um, this disciplinary matter  
4 started out as a suspension, which goes through the  
5 specificity of charges process, and goes through a hearing  
6 officer. Through that process, came to NDOT's attention that  
7 the copy of the specificity charges that was provided to Mr.  
8 Santiago had not been signed. Um, because of that, um,  
9 procedural error, uh, the department withdrew that specificity  
10 of charges. It reduced the suspension, um, and levied a  
11 written reprimand. So the -- the purpose of providing that  
12 documentation to the EMC was, was not to rely on it or try to  
13 prove it. Um, we were really merely providing procedural  
14 background, um, for the committee to understand where we've  
15 been to get to this reprimand. Um, so we -- we did not attach  
16 that to try to prove anything about the SOC. It was merely to  
17 provide (inaudible) background. So NDOT requests that the EMC  
18 dismissed Mr. Santiago's grievance without a hearing, based on  
19 the prior decision, um, related to the Dana Thomas (phonetic)  
20 matter, which was grievance number 6967. It was attached to  
21 the motion to dismiss as Exhibit J, and NRS 284.020, which  
22 authorizes agencies to manage their employees as they see fit.  
23 Dismissal of agreements is warranted because there's nothing  
24 for the EMC to decide. First, Mr. Santiago admitted to his  
25 responsibility for the collision at issue. Second, a written

1 (inaudible) not exceed the level of discipline justified by a  
2 progressive discipline principles and BDOT's, uh, prohibitions  
3 and penalties, because this was his second preventative  
4 backing collision. And third, NDOT did not violate any  
5 statute, rule, or regulation in issuing a reprimand. Mr.  
6 Santiago cannot prevail on any of these grounds and -- and  
7 EMC's precedent, the Dana Thomas decision, supports dismissal.  
8 So I'll go through each of these three. First the facts --  
9 this case is about a written reprimand for Mr. Santiago's  
10 second, preventable backing collision. This time, he backed  
11 into a third party's vehicle causing almost \$10,000 in  
12 damages. Mr. Santiago does not dispute that he caused the  
13 collision. None of his paperwork that he has filed has ever  
14 indicated that he disputes that he caused the collision. He  
15 submitted statements to NDOT and to the Highway patrol. He  
16 admitted that he was in a lane of traffic, the light turned  
17 green, and he reversed instead of going forward, colliding  
18 with the vehicle behind him. Mr. Santiago does not dispute  
19 that he received a written reprimand for a previous backing  
20 collision the year before the one that is at issue now. And  
21 that previous reprimand is provided as Exhibit E, to the  
22 motion to dismiss. Therefore, there's no disputed, relevant  
23 fact for the EMC to decide today. Number two, the level of  
24 discipline in that prohibitions and penalties approved by the  
25 Personnel Commission provided the minimum discipline for this

1 second, preventable backing collision causing damage is a  
2 written reprimand or a suspension. For example, if you compare  
3 the 2018 reprimand, which again is Exhibit E, with the current  
4 reprimand, which is exhibit A to the motion to dismiss, this  
5 is second discipline for a backing collision. Specifically,  
6 this is the second discipline for -- for the following  
7 violations, NAC 284.650, subsection 11, which is abuse, damage  
8 to, or waste of public equipment, property -- property or  
9 supplies, because of inexcusable negligence or willful acts.  
10 This is his second charge for, um, prohibition of penalty fee  
11 eight, willful or careless destruction of or damage to state  
12 property. This is also his second discipline for F-2,  
13 operating state vehicles or equipment in an unsafe or  
14 negligent manner, resulting in damage to the state equipment  
15 or other property. The current reprimand lists the discipline  
16 levels for the first and second offenses reach charge  
17 (phonetic). Also, I've provided, as Exhibit Q to the motion to  
18 dismiss, a copy of NDOT's prohibitions and penalties. As you  
19 can see, the minimum level discipline for a second violation  
20 of B-8 is a level four, which is actually a suspension. The  
21 minimum discipline for a second violation of F-2 is a written  
22 reprimand. A maximum discipline for both of these is a level  
23 six dismissal. So a written reprimand for this second,  
24 preventable backing collision is within the guidelines set  
25 forth in NDOT's prohibition and penalties, and is even below

1 the minimum discipline for B-8. Therefore, the level of  
2 discipline, a written reprimand, is not an abuse of  
3 discretion, and there's nothing for the EMC to decide about  
4 the level of discipline. Regarding number three, no violation  
5 of statute, regulation, or policy -- NDOT did not violate any  
6 statute, regulation, or policy when it issued this written  
7 reprimand. As I mentioned, the original discipline was for a  
8 suspension. NDOT withdrew that, because of the procedural  
9 error, not because Mr. Santiago disputed any of the facts, and  
10 then, NDOT reduced the suspension to a written reprimand. If  
11 Mr. Santiago's suspension had gone to hearing, and the hearing  
12 officer had set it aside, based on a procedural error, because  
13 Mr. Santiago did not dispute the fact that he caused the  
14 collision, NDOT would've been authorized to reduce the  
15 suspension to a written reprimand, which is what it did. And  
16 we do have Nevada Supreme Court precedent establishing that  
17 process through the hearing officer process. In a case that I  
18 cited in the motion to dismiss, called Taylor versus the  
19 Department of Health and Human Services, the hearing officer  
20 set aside a termination, and the court ruled that appointing  
21 authority could determine the appropriate lower level of  
22 discipline. Here, NDOT was within its rights -- can you excuse  
23 me for a moment. I'm so sorry -- here NDOT was within in its  
24 rights and did not violate -- violate any statute, regulation,  
25 or policy in changing the suspension to a written reprimand.

1 In the grievance, Mr. Santiago cites to only two statutes --  
2 NRS 281.641 and NRS 284.387. NRS 281.641 is the whistleblower  
3 statute. Claims under NRS 281.641 are decided by a hearing  
4 officer, not the EMC. Agreements' FAQs, which are provided as  
5 Exhibit K to the motion to dismiss, confirm that the term  
6 grievance does not include claims under the whistleblower  
7 statute. The other statute Mr. Santiago cites to in his  
8 grievance is NRS 284.387. This is the statute that sets forth  
9 the process for appealing a specificity of charges, which is  
10 limited to suspensions, (inaudible) motions for dismissals.  
11 Such appeals go to a hearing officer, not the EMC. And that's  
12 provided through NRS 2840.390. So as you can see, none of the  
13 statutes that Mr. Santiago relies upon, NRS 281.641 and NRS  
14 284.387, apply to the EMC. What Mr. Santiago is asking for is  
15 that he not be disciplined at all for the second, preventable  
16 backing collision. If the EMC were to grant his grievance,  
17 that would be a violation of NDOT's prohibitions and  
18 penalties, NAC 284.650, in the principles of progressive  
19 discipline. Regarding the EMC's prior decisions in  
20 jurisdiction, which justified, um, dismissing this agreement  
21 without a hearing, NAC 284.695 allows the EMC to answer a  
22 request for consideration of agreements without a hearing, if  
23 the case is based upon a previous decision or does not fall  
24 within its jurisdiction. So I'd like to just briefly explain.  
25 I know I've gone on, uh, a little bit long. So I want to

1 explain the previous decision of Dana Thomas. In that  
2 decision, the EMC dismissed agreements where the employee did  
3 not deny that she committed misconduct. The minimum -- minimum  
4 discipline was a written reprimand. And so the EMC granted the  
5 motion to dismiss that grievance. That is the same case here.  
6 The level of discipline was within the prohibitions and  
7 penalties. The personnel commission has approved NDOT's pers -  
8 - prohibitions and penalties. And the level of discipline is  
9 reasonable, as a matter of law. Put another way, the EMC does  
10 not have jurisdiction to prescribe the level of discipline, if  
11 it is within the leveled call for by the prohibitions and  
12 penalties is deemed reasonable, also, based on the case that I  
13 cited previously, called Taylor. NRS 34.02 (phonetic)  
14 authorizes agencies to manage their employees as they see fit.  
15 This is consistent with another EMC prior decision, Victoria  
16 Schmader (phonetic), number 1674. In that decision, that EMC  
17 decided it will not put itself in the place of an appointing  
18 authority, which has a great deal of latitude as management of  
19 its employees. Accordingly, NDOT respectfully requests that  
20 the EMC grant the motion to dismiss. I -- for the committee's  
21 convenience, I submitted a verbose motion, or -- in the motion  
22 to dismiss, on page 5. So the proposed motion is to dismiss  
23 Mr. Santiago's grievance without a hearing, based on the EMC's  
24 prior decision, in the grievance of Dana Thomas, number 6967,  
25 and NRS 284.020, which authorizes agencies to manage their

1 employees as they see fit. Because NDOT did not violate any  
2 statute, rule, or regulation in issuing the written reprimand,  
3 Mr. Santiago admitted to his responsibility for the collision,  
4 and a written reprimand does not exceed the level of  
5 discipline justified by progressive discipline principles and  
6 NDOT's provisions and penalties for backing -- second backing  
7 collision. Um, if there are no questions, um, Madam Chair, I  
8 would yield the floor.

9 S. PARKER: Thank you. Thank you, counselor. Any  
10 questions in the South?

11 DAVIES: Not from me, thank you. This is Gwyn.

12 BAUER: This is Jennifer, Ms. Chair. No questions.

13 S. PARKER: No questions?

14 SCOTT: No questions from me. This is Mary Jo.

15 S. PARKER: thank you so much. Okay. So, Mr. Santiago?

16 SANTIAGO: Yes, ma'am?

17 S. PARKER: Raise your hand. Could you come up to the  
18 -- yeah.

19 SANTIAGO: Is that where you'd like me?

20 S. PARKER: I'm wondering if it would be better if he  
21 goes over here, so she can see him. Is that all right? Is that  
22 okay? Just a swivel. Yeah. And I am gonna ask you, Mr.  
23 Santiago, because I -- I didn't realize this, but I should  
24 have sworn in.

25 SANTIAGO: Yes, ma'am.

1 S. PARKER: Anyway, I just wanna make sure that -- ask  
2 you -- do you swear to tell the truth, the whole truth,  
3 nothing but the truth?

4 SANTIAGO: Yes, ma'am.

5 S. PARKER: Awesome. Thank you.

6 SANTIAGO: Do you need me to --

7 S. PARKER: Yeah, that was Mr. Santiago, for the  
8 record. And yes, please sign in (phonetic).

9 SANTIAGO: Good morning.

10 S. PARKER: Good morning.

11 SANTIAGO: Uh, do I address you as Ms. Madam or Madam  
12 Counsel. Um, NDOT's counsel continues to try and have the case  
13 dismissed in its entirety, but its statements (inaudible). But  
14 the EMC does have jurisdiction over the written reprimand and  
15 the injustice of NDOT's actions, as well as the abuse of  
16 discretion by NDOT. In NDOT's motion to dismiss, page 10 -- 10  
17 of 12, line two through four, um, they state that they do not  
18 cover her -- her -- the EMC does have jurisdiction over a  
19 portion of the grievance. Therefore, I request the EMC deny  
20 their request for dismissal. The purpose of this grievance is  
21 to show the unjust behavior I've experienced from NDOT staff.  
22 I understand the scope of the EMC's purpose, and I'll provide  
23 evidence supporting the unjust and wrongful actions  
24 experienced by me, due to NDOT's inconsistency in implementing  
25 and enforcing their own documented policies and procedures.

1 Um, in my opening statement, I believe I've covered most of  
2 that. Uh, in response to the motion to dismiss of grievance  
3 7085, I'm requesting the EMC deny the motion to dismiss by  
4 Carrie Par, de -- Carrie Parker, Deputy Attorney General,  
5 based on factual evidence as follows -- the grievance in  
6 regards to a written reprimand, Exhibit 1, in my response  
7 included in the motion to dismiss, issued by myself. The  
8 document not only contained a violation of NAC's and NRS's,  
9 but also cites (inaudible) previously removed by hearing  
10 officer. And yet it's still presented and utilized as evidence  
11 against myself. The focus of my grievance is to demonstrate  
12 the injustice action against myself and prevent and stop it  
13 from happening to current and future employees. The unjust  
14 actions towards me have resulted in me having changed my  
15 career path subsequently, and a reduction of my pay, due to  
16 being targeted by NDOT and its staff, including its appointing  
17 authority. NDOT Human Resources and its staff and appointed  
18 authority claim to have followed all policies, procedures, and  
19 protocols in issuing this disciplinary action, I've  
20 demonstrated and revealed that NDOT and its staff do not  
21 follow these policies and procedures as a com -- as they  
22 claim. One example of this is them reversing documentation to  
23 remove this from my record, as a result from them not  
24 following procedures. The reverse only occurred, because I  
25 represented, or presented their wrongful actions before a

1 hearing officer, which resulted to them acknowledging,  
2 correcting their lack of following procedures. By them  
3 reversing this and retracting this document, I now -- am now  
4 attempting this -- to -- I am now attempting to have this  
5 grievance dismissed. This demonstrates they will go to great  
6 lengths to cover up their willful and deliberate abuse of  
7 power, as well as gross negligence and disregard for state law  
8 in their own policies and procedures. I believe this motion to  
9 dismiss is a last ditch effort in order to prevent the  
10 wrongdoing and not just -- unjust behavior toward myself from  
11 being exposed before the Committee. At this time, I've already  
12 submitted a packet with the required documentation and written  
13 examples of the unjust actions towards myself and NDOT and its  
14 staff. I received a copy of NDOT's packet, and upon  
15 examination, I found incorrect and incomplete documentation in  
16 the violations of EMC procedures, as well as NRS and NAC.  
17 Additionally, section three, on item B of page six -- of page  
18 6 of this motion dismiss, (inaudible) EMC cannot grant most of  
19 the request for leave (phonetic). The use of the word most  
20 acknowledges the validity of this grievance. It shows that the  
21 EMC does, in fact, have the authority to address some portions  
22 of this grievance. In an attempt to prevent both current and  
23 future employees from experiencing injustices and hardships  
24 that I myself have experienced, I feel it is in the best  
25 interest of all parties involved, that the injustice be

1 brought to light before the EMC, with a formal hearing. If the  
2 NDOT -- if NDOT and its staff and appointing authority believe  
3 that they have followed all policies and procedures lawfully,  
4 they should welcome the examination process of a formal  
5 hearing before the committee. I look forward to the  
6 opportunity to present examples and supporting evidence I've  
7 gathered to the committee on the hearing September 9th, today,  
8 2021. Thank you for your time and attention to this matter.

9 S. PARKER: Thank you. And any questions for Mr.  
10 Santiago?

11 SANTIAGO: Actually, I have a little bit to add.

12 S. PARKER: Oh, I'm sorry. I'm sorry.

13 SANTIAGO: I actually forgot this note up here.  
14 Furthermore, one week after the deadline set forth by the EMC  
15 and the order scheduling hearing document, I received a  
16 request by the EMC coordinator, uh, requesting via -- or on  
17 behalf of Ms. Parker, that I was requested to destroy a copy  
18 of the original packet that was sent to me via (inaudible)  
19 certified mail, um, and email by Ms. Parker and her office. In  
20 this request, Ms. Parker acknowledges that my exhibit copy  
21 received from Ms. Parker's office contained confidential  
22 information. Additionally, I present -- present a case for  
23 dismissing the entire employee's packet, due to failure to  
24 comply with section 2 documents and materials to be presented  
25 at the hearing, 1 through 7, in the order scheduled hearing

1 document, and due to discrepancies found in the original  
2 packet and the redacted packet. This also provides alternative  
3 documents to this entire -- this also provides continued proof  
4 of alternative documents throughout this entire disciplinary  
5 and legal action.

6 S. PARKER: Thank you.

7 SANTIAGO: That's it. Sorry.

8 S. PARKER: No, that's all right. Thank you. Okay, Ms.  
9 Parker, did you wanna respond? Or does anybody have a -- wait.  
10 Does anybody have any questions, in Southern Nevada?

11 DAVIES: No, ma'am. Madam Chair, sorry.

12 S. PARKER: And Mary Jo?

13 SCOTT: Not at this time. Thank you.

14 BAUER: Ms. Chair, this is Jennifer.

15 S. PARKER: Yes?

16 BAUER: Uh, question of agreement.

17 S. PARKER: Absolutely.

18 BAUER: Um, we've read all of your documentation and  
19 commend you for all that documentation. I just wanna clear on  
20 the record today. Um, do you dispute that the collision  
21 occurred?

22 SANTIAGO: No.

23 BAUER: Okay. Thank you. That's all the questions I  
24 have, Ms. Chair.

25 S. PARKER: Thank you so much. Okay. And Ms. Parker,

1 did you wanna respond?

2 C. PARKER: Yes, if I may. Carrie Parker, for the  
3 record, um, I'd like to respond to Mr. Santiago's  
4 representation about the, um, packet that I asked be  
5 destroyed. It came to my attention, through an error from my  
6 own fault, that some of the exhibits had personal, identifying  
7 information of the, um, person whose vehicle was hit, um, by  
8 Mr. Santiago, as well as Mr. Santiago's own, um, personal  
9 address. So I redacted those, um, personal identifiers and  
10 resubmitted a packet. Um, the packet that was sent to Mr.  
11 Santiago was exactly the same. It only provided, um,  
12 redactions. And I asked that the other be, um, destroyed,  
13 simply to protect the private information of the third party,  
14 um, who was the victim of Mr. Santiago's accident. Um,  
15 regarding the arguments that Mr. Santiago made, um, the  
16 language that he refers to in the motion to dismiss about most  
17 of the resolution not being able to be granted by the EMC is  
18 in the alternative section of the motion, where, um, I was  
19 addressing just the resolutions that were requested. Um, if  
20 the EMC is not inclined to grant the motion to dismiss, I -- I  
21 would alternatively like that the -- the request that the --  
22 would just be limited only to the written reprimand and not  
23 Mr. Santiago's other arguments. Uh, and that is what I meant  
24 by that section of the motion, because the EMC is not  
25 authorized to address alleged harassment, retaliation,

1 discrimination, demotion, transfer letters of instruction, or  
2 the discipline of other employees. That's -- that's merely,  
3 uh, what I was referencing there. Um, the Department of  
4 Transportation continues to maintain that it acted within its  
5 authority to reduce the suspension to a written reprimand.  
6 And, um, as Chairman, or Bauer, um, asked Mr. Santiago, and he  
7 confirmed, he does not dispute, uh, that he caused a collision  
8 -- collision. This was his second, preventable backing  
9 collision. He received a written reprimand already. A second,  
10 written reprimand is not unreasonable. It's within the  
11 guidelines. And the Department of Transportation requests that  
12 the motion be granted. Thank you.

13 S. PARKER: Thank you, uh, counselor, uh, Parker. Did  
14 you have any questions or cross exam for, Mr. Santiago?

15 C. PARKER: Um, no. Um, I -- I would reserve any  
16 questions, if the --

17 S. PARKER: Okay.

18 C. PARKER: -- if the matter is proceeded to the  
19 grievance (inaudible) --

20 S. PARKER: (Inaudible). Okay. Thank you so much.

21 C. PARKER: Thank you.

22 SANTIAGO: Madam? Can I ask Ms. Parker, when she submitted  
23 --

24 S. PARKER: And you'll get cross.

25 SANTIAGO: Oh. Ms. Parker, when did you submit the

1 redacted copy?

2 C. PARKER: I'm sorry, I didn't hear. Was it, when did  
3 I submit?

4 SANTIAGO: Yes, ma'am. The redacted copy of the packet,  
5 the employer's packet.

6 C. PARKER: Right. So I, um, was notified of the  
7 error. And I went down to the EMC office (inaudible) --

8 SANTIAGO: When were you notified of the error -- Ms.  
9 Parker, when were you notified of the error?

10 C. PARKER: I'm sorry?

11 SANTIAGO: When were you notified of the error?

12 C. PARKER: I don't remember. I'm not sure. Um, I'm  
13 not sure of the relevance. Um, with -- because you had the  
14 packet the whole time, and what I'm understanding from you is  
15 that it hasn't been destroyed. Um, so you -- the packet's  
16 exactly the same. So I'm not understanding, um, the relevance  
17 of the questions.

18 SANTIAGO: Um, due to the fact that the order scheduling  
19 the hearing says --

20 S. PARKER: So, Mr. Santiago, hold on a minute. Um,  
21 Counselor Parker, I just wanna remind you that if the -- the --  
22 - the employee has a question for you, the relevance will be  
23 decided by the EMC Committee. So if you don't know the answer,  
24 just advise him that you don't know. Just -- we don't wanna be  
25 combative, so.

1 C. PARKER: Okay. I -- I -- for the record, thank you,  
2 Madam Chair. I will, um, lodge my objection to the question.  
3 Um, and I understand that it be decided by the committee. I  
4 have my calendar in front of me, and I don't know, um, I could  
5 look at my emails to see when I was notified by the EMC  
6 coordinator that, um, the packet contained confidential  
7 information. If you could just give me a moment, if it pleases  
8 --

9 S. PARKER: Absolutely.

10 C. PARKER: -- the committee? I can see that I  
11 corrected the redactions on Thursday, August 19<sup>th</sup>. And I was  
12 informed on Wednesday, August 18<sup>th</sup> that redactions were  
13 needed. So I, um, addressed the problem the very next day.

14 SANTIAGO: My -- my concern with that, um, Madam Chair, is  
15 actually in accordance with this order scheduling the hearing,  
16 it's just -- it states that there's no packets late allowed.  
17 Not only that, but it is said that it -- in here, that the  
18 redacted copy is to be submitted prior, or that the -- excuse  
19 me, the packet is to be redacted prior to the submission to  
20 the EMC Committee hearing. So therefore, that packet has been  
21 modified since the deadline, which was set forth by the  
22 committee and the EMC coordinator, which I don't believe that  
23 should be considered, because that's been altered after the  
24 deadline. And Ms. Parker's claims of the packet is exactly the  
25 same that I was mailed versus what was given to me by the EMC

1 coordinator, are inaccurate. I have both packets with me today  
2 that will demonstrate that they're -- both packets have -- the  
3 packet given to me at the later time had been altered, post  
4 the deadline that was set forth by the committee.

5 S. PARKER: Thank you.

6 DAVIES: Madam Chair, this is Gwyn.

7 S. PARKER: Yes, the Chair recognizes, uh, Co-chair  
8 Davies.

9 DAVIES: Thank you, ma'am. Um, I -- I have a question.  
10 Just -- just for clarification. Are we discussing the packets  
11 that were submitted for the grievance, or the packets that  
12 were submitted for the motion to dismiss the grievance?  
13 Because, I don't wanna get into testimony for the wrong --

14 S. PARKER: Yeah. So this is -- this has nothing --

15 SANTIAGO: This is part of the grievance.

16 S. PARKER: Great point, Co-chair Davies. So this has  
17 nothing --

18 SANTIAGO: But I do -- but what I did was I addressed this  
19 issue in the response to this motion to dismiss, that there is  
20 documentation that is inaccurate --

21 S. PARKER: Okay.

22 SANTIAGO: -- that she cited --

23 S. PARKER: But it pertains to the grievance itself --

24 SANTIAGO: -- (inaudible). Yes.

25 S. PARKER: -- and not to the --

1 SANTIAGO: Not to the hearing. But in my response, I  
2 stated that I had already received information that was  
3 incorrect. I'm grieving the process that was executed, not the  
4 fact that there was an accident. That's what I'm grieving.

5 S. PARKER: Right. Okay. Awesome. Did that answer your  
6 question, Co-chair, Davies?

7 DAVIES: It did. Thank you, ma'am.

8 S. PARKER: Thank you. And Mary Jo, do you have any  
9 questions?

10 SCOTT: Not at this time.

11 S. PARKER: Okay. Ms. Bauer, no?

12 BAUER: No questions, Ms. Chair.

13 S. PARKER: All righty.

14 C. PARKER: Madam Chair?

15 S. PARKER: Yes?

16 C. PARKER: Um, Carrie Parker, for the record. Um, I  
17 renew my objection to this line of questioning about the  
18 packets.

19 S. PARKER: I'm sorry, say that again.

20 C. PARKER: I renew my objection to the line of  
21 questioning about the packets. Uh, the motion to dismiss was  
22 submitted. The packet was there. Mr. Santiago has had all of  
23 the packets, and he conceded that he received the one, um,  
24 that did not have the redactions.

25 S. PARKER: Thank you. Thank you. Okay. So, um, does

1 either party have a closing statement? I kind of did this  
2 unorthodox. I'm sorry.

3 SANTIAGO: It's okay.

4 S. CARTER: Just how it flew. I'm sorry. But, I'm  
5 still giving everybody a chance to -- to -- to cross examine  
6 and things like that. So anything in closing before we start  
7 to deliberate? And this is on the motion to -- to dismiss  
8 only? Okay. And then I'm gonna exit just for a minute, because  
9 I -- I -- I should have -- I should have clarified something  
10 earlier that I didn't. And, um, I just wanna, uh, say, as a  
11 reminder that, um, committee members have thoroughly read  
12 everything that you've submitted, that everybody submitted --  
13 the motion to dismiss anything else. Um, uh, so, you know, and  
14 we -- we cut off on some redundant, uh, testimony, things like  
15 that. But, um, I want us all to remember that, you know, we  
16 have to go to work tomorrow. So -- and I don't know where my  
17 verbiage is on that, but I just want everybody to be  
18 respectful of -- of everybody else. And this is supposed to be  
19 a productive process for us, and we just need to gather the  
20 information that we need to. So I appreciate that. And -- so  
21 that if we can just be respectful of other people. And -- and,  
22 uh, and if you have any issues, just direct those to me, if  
23 you question the relevance or things like that. Okay? Thanks.  
24 So, um, we'll go ahead and start deliberating then.

25 DAVIES: No.

1 S. PARKER: Huh?

2 DAVIES: Ms. Chair, for the record?

3 S. PARKER: Yes?

4 DAVIES: We're only deliberating the motion to dismiss  
5 at this point. And the motion -- the argument made -- excuse  
6 me. (Inaudible). Um, the motion to dismiss the argument made  
7 for it -- by Ms. Parker, um, was that because Mr. Santiago had  
8 agreed that he had had the accident, he wasn't disputing the  
9 written reprimand. Yet his grievance, um, doesn't dispute the  
10 accident. He's not disputing the accident, he's disputing the  
11 process. So I think we should move forward.

12 S. PARKER: Thank you.

13 DAVIES: I think they're arguing the wrong point.

14 S. PARKER: Thank you, Co-chair Davies.

15 BAUER: Ms. Chair, this is Jennifer.

16 S. PARKER: Yes?

17 BAUER: May I ask a question of my fellow committee  
18 member?

19 S. PARKER: Please do.

20 BAUER: When -- when you say we should move forward,  
21 what do you mean?

22 DAVIES: I mean, we should deny the motion to dismiss. I  
23 apologize for my poor English.

24 S. PARKER: No worries. I just wanted to be clear.

25 DAVIES: Well, I -- I always feel nervous around someone

1 who's from the charter schools, because, you know, school  
2 still scares me.

3 S. PARKER: Awesome. Thanks. Member Scott, do you have  
4 any questions, any points that you wanted to make?

5 SCOTT: Did you ask me?

6 S. PARKER: Yes.

7 SCOTT: Oh. Not at this time. I -- I guess I'm going  
8 back and forth on it a little bit in my head, so just gimme a  
9 sec.

10 S. PARKER: Okay, thanks. And Stephanie Parker, for  
11 the record. Um, and again, we'll re-announce our names every  
12 time that we speak. So you may get annoyed with that. We have  
13 to do that for minutes' sake, um, so that they can be  
14 transcribed in -- in the minutes. But I -- I would say that  
15 I'm leaning towards, uh, denying the motion to dismiss. Um, I  
16 think that the committee has determined that they had  
17 jurisdiction to hear, uh, discipline. And that's why it was  
18 agendized. And then I hear in the -- in the motion to dis --  
19 to dismiss. I hear that we don't have, um, jurisdiction to do  
20 that. But then I also hear, well, if you do, then you  
21 shouldn't grant. So it's kind of contradictory. Um, I would  
22 like to hear the actual case. That will determine whether or  
23 not we have jurisdiction. Um, so that's what I'm leaning  
24 towards.

25 BAUER: Ms. Chair, this is Jennifer.

1 S. PARKER: Yes.

2 BAUER: So, um, in looking at the previous decision for  
3 griev -- um, Thomas from DPS, the citation was used, because  
4 specifically, this committee did talk about in that case, uh,  
5 jurisdiction and the ability to grant or deny a motion to  
6 dismiss. And I think that's actually a relevant citation,  
7 because both you and I were on that hearing. And, um, I know  
8 it might have felt like 10 years ago, but we were on it. Um,  
9 and so, where I'm leaning is, although I have significant  
10 concerns over the allegations and procedural errors that have  
11 occurred in this case, um, I think the substance of the motion  
12 to dismiss is about whether the EMC can decide whether the  
13 discipline was appropriate or not. And that would substitute  
14 ourselves in the position of the employer, which is precluded  
15 by NRS 284.020, where an agency can run its affairs as it sees  
16 fit. So in the case of, um, Preva (phonetic) Thomas, she also  
17 did not dispute that the, the behavior occurred that warranted  
18 the discipline. And so, um, again, to reiterate, I -- I do  
19 have concerns about the procedural errors. I do think that  
20 that needs to be looked at. Um, but I think that I'm leaning  
21 towards granting the motion to dismiss, because it is  
22 consistent with previous decisions by the Employed Management  
23 Committee. And we can grant motions to dismiss, based on  
24 previous decisions for (inaudible) and precedent.

25 S. PARKER: Thank you. Yes, Member Scott.

1           SCOTT:       Madam Chair, this is Mary Jo Scott. I -- that  
2 is where -- I -- I guess I'm on the fence. I -- I want to hear  
3 the grievance, but I -- I hear that we've already set the  
4 precedent, uh, with the Dana Thomas case, with the motion to  
5 dismiss, and that we don't wanna place ourselves in the, uh,  
6 position of the appointing authority and making that decision.  
7 And I think that they have every right to produce that written  
8 reprimand. And he has already, um, admitted to the backing  
9 collision. And this is the second backing collision. And they  
10 could have raised that to the suspension. And I understand the  
11 procedural, um, misstep perhaps, but I think that was why they  
12 backed it down to the written reprimand. And I am leaning more  
13 towards the motion (inaudible) dismiss, especially with the  
14 precedent that was set with the Dana Thomas, the 6967  
15 grievance. So I'm leaning more towards the motion to dismiss.  
16 I think that the precedent was already set. And we have every,  
17 um, I -- I think that's more where I'm --

18           S. PARKER:       Thank you. So I have a question for our  
19 DAG, because my understanding is we don't set precedent. Um, I  
20 -- I -- I -- I get that if they're the exact same  
21 circumstances, I don't think that there's, uh, Stephanie  
22 Parker for the record, sorry -- um, same exact circumstances.  
23 So my question is to the DAG, our previous decisions set  
24 precedent.

25           WEISS:       That is correct, Madam Chair.

1 S. PARKER: They are?

2 WEISS: That's correct.

3 S. PARKER: Okay.

4 DAVIES: So we don't set precedent, but we did -- sorry.  
5 Gwyn, for the record. I'm confused about the question now. So  
6 we're saying that we don't set precedent -- understood and  
7 agreed. But we did set precedent?

8 BAUER: Ms. Chair, this is Jennifer.

9 S. PARKER: Yes.

10 BAUER: If I may offer my two cents, for the value that  
11 they are? Um, historically, the Employee Management consid --  
12 uh, Committee decisions do set precedent, because we have the  
13 authority to decide, based on previous decisions. And not  
14 having stayed at a Holiday Inn Express or being an attorney in  
15 ever a previous life, um, I -- I believe that that is in line  
16 with the definition of a precedent. So, um, that's where I'm  
17 coming from, is we wanna remain consistent, as a committee,  
18 where we are not conflicting with or contradicting with  
19 previous decisions made by the committee. Uh, that does guide  
20 our -- our protocol, going forward. Is that helpful?

21 S. PARKER: That is.

22 BAUER: Is that helpful, Gwyn?

23 DAVIES: Yes. Yes. I -- I'm just wondering, uh, I'm just  
24 trying to, uh, whirl the gears in my own -- correct -- in my  
25 own, uh, bone box. Um, cause I'm -- I'm worried up here that

1 what I'm hearing is -- I'm worried that what I'm hearing is --  
2 or not worried. I'm just -- so we're setting a precedent that  
3 we won't hear grievances that are the foundation -- the -- the  
4 foundation event was something that someone agreed actually  
5 happened. So I was grievanced for striking Todd on camera, and  
6 I agreed that I did it. But the process that I was then  
7 handled with was completely messed up. But because I agreed  
8 that I did that, we won't hear anything any further. What's  
9 the purpose of the EMC at that point? We could work every  
10 grievance is, oh, sorry, we've heard this before. We're not  
11 gonna hear it, because you admitted that you struck Todd. I  
12 just -- are we here to serve a function or are we here just to  
13 be decoration on poor decisions? I -- I think we need to hear  
14 this, because the grievance -- the grievance -- grievance --  
15 three times in a hurry, not gonna happen for me -- state, you  
16 know, this was being given to me for an accident. I believe,  
17 yeah, once again, this is another form of work -- sorry about  
18 hitting you mate -- this is another form of harassment and  
19 discrimination against me for my honest, previous actions.  
20 Well, I don't know what those honest actions, previously were.  
21 And if they were the accident, they were -- yeah. I -- I'm  
22 just -- I have concerns on whether we're just pulling the last  
23 of our teeth, in which case, you know, why are we here?  
24 Please, someone, please give me a direction, make an argument  
25 that convinces me one way or another.

1           S. PARKER:       Yeah. Thank -- thank you Co-chair Davies.  
2 I -- I'm been the same predicament. I -- I -- don't see these  
3 as same cases, uh, referencing the Thomas case. Uh, I'm still  
4 standing with, I mean, I don't -- and it's, again, I don't  
5 know who said this, and forgive me if I miss misstate this,  
6 but, um, the, the grievant agreed that the incident happened.  
7 He didn't agree to what the circumstances were. So, I mean, I  
8 want to hear the background on that. So I -- I don't want  
9 something in the past to tie my hands, based on a previous  
10 decision that, um, may have similar. May -- maybe, maybe 50%  
11 of it is similar. But I want -- I -- I want the chance to  
12 actually hear the grievance. So that's where I'm at.

13           DAVIES:       Madam Chair, it's Gwyn?

14           S. PARKER:       Yes?

15           DAVIES:       Uh, just to read from the last page of, uh, uh,  
16 decision 2221, um, which was Exhibit J, last page, last  
17 paragraph, Chair (inaudible) made the second motion to dismiss  
18 grievance 6967, based on blah, blah, blah, blah -- based on  
19 prior decision to grievance Schmader (phonetic). So we're --  
20 we're going to look at dismissing because of Thomas, which was  
21 dismissed because of Schmader, excuse my flights of fancy,  
22 which was dismissed because of Abel, because of Bravo, because  
23 of Charlie, because of Delta, because of Echo, because of ad  
24 infinitum. At some point, you know, the Supreme Court is  
25 allowed to go back and look at Roe versus Wade through the

1 angle of the current Texas thing. I think sometimes we have to  
2 go back and look at our stuff. Precedent is not always rock  
3 solid. Again, I invite someone to change my mind, 'cause I'm  
4 open to such discussions, or -- or hopefully, I've changed  
5 somebody else's mind when we hear this.

6 BAUER: Ms. Chair, this is Jennifer.

7 S. PARKER: Yes.

8 BAUER: So again, for the record, I will restate my  
9 concerns and, um, I will go on record, and advise the agency  
10 to, um, closely review their procedures and closely review  
11 that, um, protocol is strictly adhered to, in compliance with  
12 all regulatory (phonetic) policy, um, because it appears that  
13 there probably were some procedural errors and there had been  
14 admission of that by counsel, uh, or DAG Parker. However, uh,  
15 I, in my mind, am setting aside those procedural errors,  
16 because I don't feel like they're relevant to the substance of  
17 the motion to dismiss. The substance of the motion to dismiss  
18 is based on the Dana Thomas case, wherein the grievant  
19 admitted to the conduct. So if the grievant admits to the  
20 conduct, then there is just basis for the issuance of a  
21 written reprimand, in compliance with not only the personal  
22 commission adopted prohibitions and penalties, but pretty much  
23 every prohibition and penalty I know of, of state agencies in  
24 the, the entire state Nevada. So I don't know that hearing the  
25 grievance would actually do any good, for the grievant or the

1 department, because at the end of the day, if the grievant  
2 admitted a conduct that warranted the written reprimand, we  
3 have no business putting ourselves in the place of the agency  
4 and deciding whether that written reprimand was warranted for  
5 the conduct. Our job is to ensure that the written reprimand  
6 was issued in compliance with law, reg, and policy. And not  
7 withstanding all the procedural errors that occurred in  
8 advance, and possibly procedural errors that we have not heard  
9 about or would not, unless we hear the grievance about the  
10 grievance, the written reprimand, at the end of the day, was  
11 issued in accordance with prohibitions and penalties, which is  
12 allowable, and is based on non-disputed conduct.

13 DAVIES: So Member Bauer, uh, this is Gwyn, for the  
14 record, just to get clarity, then, what you're saying, um --

15 S. PARKER: Yes, Co-Chair Davies.

16 DAVIES: If we go -- I'm sorry ma'am? I apologize. I  
17 wasn't recognized.

18 S. PARKER: Go ahead. Sorry.

19 DAVIES: Um, what you're saying, just so that I can get  
20 the line of thought here, is that if we move forward, with a  
21 hearing, we won't do any good, because the written reprimand  
22 is on solid ground, and that, uh, any decision we make will be  
23 based on -- we have to -- it's -- and -- and I do -- I'm not  
24 disputing this with you. I -- I'm just restating it. This  
25 reprimand is not -- this reprimand is not being argued for the

1 sake of its facts. So that, um, if the reprimand is grievance  
2 -- if the reprimand was grievance for its facts, then, uh, we  
3 would have no grounds to overrule the, uh, the dismiss the  
4 reprimand, because the -- all parties agreed that the  
5 reprimand was accurate, as to the facts of the event. So what  
6 you're saying is we shouldn't move -- it -- it would --  
7 wouldn't benefit anybody, us moving forward to that, um,  
8 because everybody agrees that's what happened. Is -- is that  
9 my understanding? So you're saying, we should just dismiss  
10 this now, because when it gets -- when we go to the next  
11 stage, we're just gonna be running in circles?

12 S. PARKER: Thank you. (Inaudible) --

13 BAUER: Ms. Chair, Ms. Chair, this is Jennifer.

14 DAVIES: Sorry, I'm just trying to make sense of what  
15 I'm -- I'm hearing, because I, you know, I'd like to hear all  
16 parties fairly. And -- and my fellow members of -- of -- make  
17 a -- make a point.

18 BAUER: Ms. Chair, this is Jennifer. Um, so to answer  
19 your questions, Gwyn, um, I am not saying that the committee  
20 members have or would say anything. I -- I don't know what the  
21 committee members would say if we were to hear this grievance.  
22 However, what I'm saying is, um, let me give you a  
23 hypothetical situation. If we all had access to a DeLorean,  
24 and could go back in time, and this grievance, um, were just  
25 based -- or the -- the motion to dismiss on the grievance were

1 just based on the issuance of a written reprimand, and no  
2 other procedural errors occurred or anything like that, um,  
3 relevant to the motion to dismiss, then we would ordinarily  
4 grant that motion to dismiss, because the basis of the  
5 grievance, or the basis of the motion to dismiss is that the  
6 grievance was issued for fact that's undisputed, conduct  
7 that's undisputed. So try -- trying to --

8         DAVIES:     If I -- if I could jump in? I agree with you,  
9 up to this point. Please.

10         BAUER:     Okay. I'm -- I'm trying to be careful to not  
11 conflate the procedural issues and procedural errors that are  
12 not the substantive basis of the motion dismiss.

13         DAVIES:     I know. You -- you can't read my face because  
14 it's miles away and it's covered by this, uh, diaper. But yes,  
15 I agree with you up to that point. So please carry on. Sorry.  
16 I just wanted to give you that affirmation.

17         BAUER:     Okay. I think I'm done.

18         S. PARKER:     Oh, you are?

19         BAUER:     For now.

20         S. PARKER:     All right. Um, thank you. Thank you. Um, I  
21 -- I don't -- I don't -- I'm still looking for the rest of the  
22 answer for his question, for Co-chair Davies's question. And I  
23 --

24         BAUER:     Sorry, Ms. Chair, this is Jennifer. Did I fail  
25 to answer the other questions that -- did I forget them?

1 S. PARKER: Yeah, what -- what part are you still  
2 waiting for, Co-chair Davies?

3 DAVIES: Well, I -- I agree that if, if we were hearing  
4 this -- if we were hearing a grievance just based on, the  
5 written reprimand was wrong, um, we would be dismiss -- we  
6 would be, uh, granting the motion to dismiss, because we've  
7 established that -- that the -- the accident happened, all  
8 parties agreed to the facts. What are you arguing the  
9 reprimand on? And -- and that previous hearing, which was --  
10 that previous decision, which was based on another previous  
11 decision, which I think we should have also had, um, would  
12 hold true. However, we're not arguing there -- although he  
13 does ask for the written reprimand to be removed, his  
14 description of the -- is that he's citing harassment and  
15 discrimination. Uh, and I'd like to, you know, I -- I hate to  
16 throw the baby out with the bath water.

17 BAUER: Ms. Chair, this is Jennifer.

18 S. PARKER: Okay. I'll let you go first, and then I'll  
19 go. Okay. Member Bauer, please.

20 BAUER: Thank you. All right, I -- I wanna be careful  
21 to, um, giving the impression that we can decide cases based  
22 on allegations of harassment and discrimination. I -- I wanna  
23 be careful that, um, we are not deciding it on this motion to  
24 dismiss, based on something that we actually don't have  
25 jurisdiction on.

1 S. PARKER: Right. Thank -- that -- that is what I was  
2 gonna say, because this isn't the venue for that.

3 DAVIES: Yeah.

4 S. PARKER: But yes, go ahead.

5 BAUER: I'm done. Sorry. I'll say I'm done after every  
6 time I speak now.

7 S. PARKER: Oh, okay. Yeah. Just cause I can't see  
8 facial expressions, yeah. You know, but -- but thank you,  
9 again. I mean, I just wanted to make sure that that wasn't --

10 BAUER: Yeah.

11 S. PARKER: -- because that is not my reasoning why I  
12 still don't know that -- I still don't know the facts of the,  
13 um, the reprimand. And I don't think it's the same as in the  
14 other case of -- which I can kindly actually remember not  
15 answering phones. But, um, I think this is a completely  
16 different cir -- set of circumstances. And -- this is  
17 Stephanie Parker for the record. Sorry. I -- so I -- I think -  
18 - yeah, my -- my feeling is I think we still need to hear the  
19 circumstances of the grievance. Um, I don't think that they  
20 are the same as in Thomas. I think that, whether or not, uh,  
21 the, you know, the difference between not answering the phone  
22 for some other cause and you -- you've actually acknowledged  
23 the other cause, too, versus another incident, where we've not  
24 even heard the reasons for it, I think are two completely  
25 different things. So in this case, I -- that's why I'm leaning

1 towards, I wanna deny the motion to dismiss.

2           BAUER:       Ms. Chair, this is Jennifer. Um, just curious -  
3 - so when we look at the conduct that warranted a written  
4 reprimand and you say that you don't think the situation is  
5 statute or similar, um, what -- what do you feel makes the  
6 situations different?

7           S. PARKER:       So I believe in the, uh, Stephanie Parker  
8 for the record -- for the previous one, and my recollection is  
9 coming back now, because I'm taking myself back. It was  
10 twofold. So person said that they acknowledged that they  
11 willfully did do something wrong. I don't know that somebody  
12 willfully did something wrong with this case. I -- I -- I  
13 don't, you know, that was made in the motion to dismiss, you  
14 know. Um, just because somebody doesn't answer a phone, the  
15 reason why, that -- that purpose was given during the motion  
16 to dismiss. So not only did they agree with the incident, they  
17 agreed with the -- the purpose of it, too. I -- I don't know.  
18 I -- I -- I -- yeah, I wanna know if it was -- I haven't heard  
19 anybody say willful negligence, other than somebody citing in  
20 a statute. I -- I don't know.

21           BAUER:       Mr. Chair, this is Jennifer.

22           S. PARKER:       Yes.

23           BAUER:       Okay. So, uh, thank you. That's helpful  
24 clarification. So when I look at whether it's based a decision  
25 on a past previous, um, or past or previous EMC decision,

1 especially if we look at the Thomas case, um, prohibitions and  
2 penalties allow for discipline based on conduct or  
3 prohibitions, without inclusion of the -- the intent behind  
4 every act. Right? So, um, when we look at the Thomas case, um,  
5 and I did have to refer back to the notes, because it was just  
6 five months ago, but it -- and it feels like a lifetime ago,  
7 um, the issue was not that she didn't answer the phone, and  
8 the issue was not that, um, she had any willful neglect. She  
9 made an error. And this might resonate with me a little bit  
10 more, because I worked at DPS, but she was in dispatch, and so  
11 her job was to answer the trooper's call, and her job was to,  
12 um, and this is all public record, so --

13 S. PARKER: Yes.

14 BAUER: -- her job was to answer the trooper's call.  
15 Her job was to, um, run a background check and make sure that,  
16 um, the trooper had all information about the person that he  
17 had stopped in that traffic citation or that traffic stop, and  
18 she made an error. She did not provide all the information and  
19 accurate information and it was -- it was pretty egregious  
20 error.

21 S. PARKER: Yeah. That is negligent. That -- it is,  
22 yeah. So we know that that was negligent. We don't know what  
23 the purpose of -- we don't know, in this case, what that is,  
24 because we haven't heard it. It wasn't discussed during the  
25 motion to dismiss. You know what I'm saying?

1           BAUER:       Yeah. (Inaudible) --

2           S. PARKER:       (Inaudible) gave wrong information, but  
3 she agreed that she didn't. So, yeah.

4           BAUER:       With all respect, I'm gonna push back -- and I  
5 love this dialogue, by the way -- because --I think it, I  
6 think it respects the grievance and the -- and the case that  
7 we have before us. Um, Jennifer Bauer, for the record, again.  
8 I -- I feel like, and I -- I say that this collision is  
9 egregious, because one, I've caused wrecks. I -- I've -- I've  
10 had accidents, I've caused them, they were pretty egregious.  
11 Um, and one of them was a backing accident. Um, but also, this  
12 is the second backing accident. This is the back -- second  
13 backing collision. And we did hear in the motion to dismiss,  
14 by presentation of, um, DAG Parker, that in fact, it was about  
15 \$10,000 of damage. It's kind of a lot to me. That feels  
16 egregious, because it's a lot of money. Um, and so, where the  
17 prohibitions and penalties specifically dictate a much larger  
18 disciplinary action for this conduct, I also feel that it was  
19 egregious. Whether there was, um, mal intent or not -- I'm  
20 sure there wasn't -- but I don't think that's relevant. I  
21 think the act, at its pure, simple act, is what is relevant.

22           S. PARKER:       All right. Anybody got anything else or  
23 anybody wanna make a motion? Or have any questions?

24           DAVIES:       No.

25           SCOTT:       Madam Chair, this is Mary Jo. I -- I would just

1 like to reiterate, um, I think just hearing what Jennifer said  
2 about the motion to dismiss, and I think the thing about their  
3 -- NDOT's prohibition and penalties they have their  
4 prohibitions and penalties performance on the job (inaudible)  
5 H, where it states willful or careless destruction or damage  
6 the state property. So the careless part, I think, would fall  
7 in line, that it doesn't have to be willful, it could be  
8 careless. And I think, going back, so also it says (inaudible)  
9 first offense, (inaudible) second offense is 4 through 6. So  
10 the written reprimand completely falls in line with that. And  
11 the grievance against admitted to the conduct and  
12 responsibility for the second collision. And the agency didn't  
13 violate any policy or rules providing that written reprimand.  
14 They didn't violate a statute by providing that written  
15 reprimand. And the discipline definitely doesn't exceed that  
16 level of discipline. So even going with the Dana Thomas case,  
17 I think the right line, with giving that written reprimand,  
18 following their prohibitions and penalties. And then NAC  
19 284.650, default is for disciplinary action, appropriate  
20 discipline, or corrective action, number 11, abuse, damage or  
21 waste of public equipment, property or supplies. (Inaudible),  
22 I still move towards the motion to dismiss, because I think it  
23 falls right in line with the action of the agency and their  
24 right to, um, for folks, that level of discipline for the  
25 employee. So that's -- that's just again, my two cents and

1 where I fall on this particular case. Because I they're right  
2 in line, the agency is right in line. And it, again, in my  
3 perspective, it goes with the Dana Thomas case and how the EMC  
4 has decided on a very similar case. And an employee via  
5 careless or, um, not making a thoughtless (phonetic) decision  
6 in accordance with their work performance standards. Thank  
7 you.

8 S. PARKER: Thank you.

9 DAVIES: Madam Chair, I have a question of the day.

10 S. PARKER: Yes, go ahead. Co-chair Davies.

11 DAVIES: If I motion to dismiss this -- I'm being  
12 upfront, I'm gonna vote against that motion, even though I  
13 make that motion -- if I motion to dismiss this, and we are  
14 drawn, two-two, what is the progress? Does it -- does the  
15 motion -- we didn't uphold the motion, so does the motion die  
16 on the floor? Right now, we're not voting on it. Can the  
17 motion die on the floor, and then we'll move on to the next  
18 stage? Or does the motion have to be acted upon, because it's  
19 kind of a yay or nay?

20 WEISS: How many voting members do we have in --  
21 present today.

22 DAVIES: Four.

23 UNIDENTIFIED: It's, like, only four.

24 DAVIES: Madam Chair, while the, uh, while the CAG  
25 cogitates, I would also like to, uh, uh, bring to the, uh,

1 committee's, uh, attention that, uh, if we reach a decision  
2 here soon, can we take a break? Because I'm old. I have a  
3 small bladder. I'm diabetic, which means it works even less  
4 efficiency. Thank you.

5 S. PARKER: Absolutely, we can.

6 WEISS: Madam Chair, would it be possible to get a five  
7 minute recess so I can, uh, address the member's question  
8 about (inaudible) --

9 S. PARKER: Absolutely. Absolutely. So it's 10:20  
10 right now. We'll come back at 10 --

11 DAVIES: (Inaudible) my bladder.

12 S. PARKER: -- come back -- back at 10 -- we'll give  
13 it 10:27 so that -- so we can, uh, accommodate Co-chair  
14 Davies, and myself, too.

15 DAVIES: Thank you, ma'am.

16 S. PARKER: Thank you.

17 DAVIES: Thank you, (inaudible). Are we recording?

18 S. PARKER: Okay. We'll go ahead and reconvene. And  
19 reconvene the meeting of the EMC September 9th. And we've  
20 recessed to let the DAG research a question. And, uh, do you  
21 wanna go ahead and restate the question, and then also, the  
22 answer, please?

23 DAVIES: The -- the -- the question was, when we have a  
24 vote -- was -- when we have a, uh, the situation we're in  
25 right now, where we have a motion to dismiss by one of the

1 parties -- um, obviously it'll always be management, the  
2 motions to dismiss -- we have four members of this committee -  
3 - if we vote on -- if -- if I motion to dismiss, just to move  
4 things along, and we vote on it, and we end up with a two and  
5 two, and it's hung, how do we proceed from there? Because we  
6 are hung at that point. That was my question. Uh, you know,  
7 how -- how do we function with a two and two?

8 S. PARKER: Thank you.

9 DAVIES: And that's -- that I believe is what the record  
10 will show what my question was, restated somewhat close to the  
11 first stating.

12 S. PARKER: Thank you. And DAG Weiss, do you wanna  
13 respond?

14 WEISS: Yeah, I -- I will respond. Uh, Co-chair Davies  
15 and Madam Chair, if there is -- since we have four voting  
16 members present today, if there is a two-two tie on what is --  
17 what is a motion to dismiss, as the employer has the burden on  
18 the motion to dismiss, if there is a two-two tie, the motion  
19 fails, as they have failed to -- to earn a majority of the  
20 votes. So that's what would happen in the event of a two-two  
21 tie on a motion to dismiss.

22 S. PARKER: Thank you. Okay.

23 BAUER: Ms. Chair, this is Jennifer.

24 DAVIES: You wanna address that, though? Because we're -

25 -

1 WEISS: (Inaudible).

2 DAVIES: Well, I -- I'm gonna ask you a second que -- I  
3 hate to put you on the spot, but you know, the -- as -- as  
4 part of the research, Mr. -- Mr. Weiss, uh, is questioning the  
5 NRS 284.055, bracket 2, which says we need a quorum of five.  
6 Uh, I'm confused because, from day one of serving on this  
7 board, I've always been told it's two, equal members.

8 S. PARKER: Right.

9 DAVIES: So, (inaudible) --

10 S. PARKER: And ch -- and Co-chair Davies, you are  
11 absolutely right. I think that the EMC, if he's reading a  
12 statute for the EMC, it's actually different than a regular  
13 quorum.

14 DAVIES: Okay.

15 S. PARKER: You have to specifically go to the EMC  
16 section, where there has to be an even number. So it's always  
17 gonna be either, uh, four representative or six.

18 DAVIES: All right.

19 S. PARKER: All right? Four or six. And so it's -- it  
20 always has to be equal. So there will never be, I mean, there  
21 will always be the potential for a tie.

22 WEISS: That is correct, Madam Chair.

23 DAVIES: Thank you for the clarity. All right, then --  
24 then, I would like to motion that, uh, I -- I motion that we  
25 dismiss -- or rather, I -- I -- I motion that we grant the

1 motion to dismiss.

2 S. PARKER: So we have a motion.

3 BAUER: Ms. Chair, this is Jennifer.

4 S. PARKER: Yes?

5 BAUER: May I offer a friendly amendment --

6 S. PARKER: Yes.

7 BAUER: -- to this motion?

8 S. PARKER: Yes, please.

9 BAUER: When (phonetic) -- if you're open to it, um,  
10 I'd recommend that we modify your motion, um, to something  
11 similar to you move to grant the motion to dismiss, based on  
12 the EMC's previous decision, number 22-21.

13 DAVIES: Uh, if it makes this move along, I will be  
14 voting nay. So I -- I accept the friendly amendment.

15 S. PARKER: Okay, so the amendment was accepted. And  
16 do we have a second? So that's the amended motion.

17 BAUER: Ms. Chair, this is Jennifer. Do you wanna read  
18 the amended motion?

19 S. PARKER: No.

20 BAUER: Okay. I don't have anything to read. So the  
21 amended motion is -- what's the reference number? -- 22-21 --  
22 is to grant the motion to dismiss, based on -- based on the  
23 EMC's previous decision of 22.21 -- dash 21. Sorry. And so we  
24 have -- go ahead.

25 BAUER: Ms. Chair, this is Jennifer. I second that

1 motion.

2 S. PARKER: We have a first and a second. Any  
3 questions? And we'll take a vote. All those in favor?

4 BAUER: Jennifer Bauer, aye.

5 S. PARKER: Stephanie Parker, nay.

6 SCOTT: Mary Jo Scott, aye.

7 DAVIES: Gwen Davies, nay.

8 S. PARKER: So we have a tie. So the motion does not,  
9 uh, carry. So that -- in essence, that means that the motion  
10 to dismiss just died, or the request for it just died.

11 BAUER: So the decision is to --

12 S. PARKER: The EMC's decision is to move forward with the  
13 hearing on grievance number 7085. And so we'll move to that  
14 next. Again, the answer -- the -- the decision on that will  
15 be, um, submitted, uh, within 45 days. You want to move to  
16 that one? So I'm gonna go through all my instructions right  
17 now, because this is the regular hearing (phonetic). Okay? So,  
18 um, for the scheduling orders, every par -- each party, we're  
19 allowed up to one -- are allowed up to one hour, at the  
20 discretion of the chair, to present his or her matter.  
21 Committee members may ask questions during any of the phases  
22 to ensure they understand the presentations. And the order  
23 will be an opening statement by the employee. So, Mr.  
24 Santiago, um, uh, and if you had a -- a spokesper -- or if you  
25 had a spokesperson. Then it'll follow an opening statement by

1 the agency representative. And then, we will move on to  
2 presentation by the employee's -- of the employee's case,  
3 followed by the agency's cross-examination. So keep in mind  
4 it's -- you don't wanna be redundant, but first you're gonna  
5 have an opening statement for each side. Then you're gonna  
6 have a presentation, um, then the presentation of the agency's  
7 case, followed by the employee's cross-examination, or  
8 questioning. Again, we'll hear a closing statement by the  
9 employee, and then a closing statement by the agency. At the  
10 conclusion of each grievance, the committee will deliberate  
11 and take a vote. So you wanna make sure to get your  
12 information in during the process, because once we start  
13 deliberating, you will not be able to speak. We would -- we  
14 may ask questions, but it should be very few. Um, uh, so  
15 again, during deliber -- deliberation, the parties may not  
16 participate or provide additional information, unless  
17 questioned by the committee. Again, the written decisions will  
18 be provided within 45 day of the hearing. Uh, so remember that  
19 committee members and participants must identify themselves  
20 each time before speaking for the record, with your name, if  
21 not designated. If it's not your designated time to speak, um,  
22 you must receive recognition by the chair before speaking. As  
23 we (inaudible), the committee members have carefully read the  
24 material provided. With that said, redundant testimony and  
25 inefficient use of time, each party has, for the presentation

1 as viewed by the committee, as ineffective. Committee members  
2 may ask questions of a party or witness at any time during the  
3 proceeding, upon re -- again, upon recognition by the chair.  
4 So all -- so the witnesses, I will, um, go ahead and swear in  
5 and at this time. I know -- Mr. Santiago, will you have any --  
6 do you -- I don't think we saw any witnesses --

7 SANTIAGO: No, ma'am.

8 S. PARKER: -- in your packet. Okay. So, um, for this  
9 hearing, I'm just gonna say, I know I swore you in. Do I swear  
10 him in again?

11 UNIDENTIFIED: No.

12 S. PARKER: Okay. You've already been sworn in for  
13 this proceeding. So we'll go ahead and stick (inaudible). And  
14 let's see here. So we'll go ahead and start with the opening  
15 statement. Oh, sorry. Oh, okay. Thank you for adding that. So,  
16 first of all, are there any objections to the packets that are  
17 being used?

18 SANTIAGO: Yes, ma'am. The packet that was submitted by  
19 Ms. Parker and her, and the representation on behalf of NDOT  
20 was submitted late, and doesn't correspond with the actual  
21 file line (phonetic) of, um, the proceedings. The actual  
22 packet that was redacted, was modified by the EMC coordinator.  
23 It doesn't meet with the order to schedule the hearing  
24 protocol set by -- set forth with that deadline.

25 S. PARKER: So -- and this is not --

1 SANTIAGO: This was modified at -- the document that was  
2 redacted is -- was submitted after the deadline, which  
3 therefore, the -- which states in here will not be accepted  
4 before the EMC Committee, on the scheduled hearing.

5 S. PARKER: Okay. And that's a separate, um, issue, is  
6 my understanding, because that's an issue with EMC. So -- so -  
7 - so my question is -- so I wanna see. Is that correct, that  
8 the -- for the grievance itself, that the documents were not  
9 received -- they were received by the deadline? Correct, staff  
10 (phonetic)?

11 JOHNSON: I would've to confer with Bruce Flores  
12 (phonetic). Nora Johnson, for the record. I'd have to confer  
13 with Bruce Flores. I just recently stepped in, prior to the  
14 events of these packets. Um, as a matter of procedure, packet  
15 deadlines are given in these scheduling orders. The EMC will  
16 extend a packet deadline of a day or two to either party, as  
17 requested. The actual deadlines of these packets, again, I  
18 would have to confer with Bruce.

19 S. PARKER: Okay.

20 BAUER: Ms. Chair, this is Jennifer.

21 S. PARKER: Yes?

22 BAUER: Is the grievant objecting to the entire  
23 employee packet?

24 S. PARKER: That's a good question.

25 SANTIAGO: Yes, ma'am.

1 S. PARKER: Of the employee packet or the --

2 BAUER: Or the employer's. Sorry --

3 SANTIAGO: (Inaudible) the employer's.

4 S. PARKER: Oh, okay.

5 BAUER: The entire -- the entire employer packet is the  
6 objection, correct?

7 SANTIAGO: Yes, ma'am.

8 C. PARKER: Madam Chair, can I respond?

9 S. PARKER: Yes.

10 C. PARKER: Deputy Attorney General Carrie Parker, for  
11 the record. As I stated in the previous hearing on the motion  
12 to dismiss, I submitted the packets on time. There's no  
13 dispute to that. My office failed to (inaudible) a copy of the  
14 packet. There's no dispute as to that. The EMC coordinator  
15 notified me on August 18th that there were, uh, redactions  
16 that were needed. She granted me an extension. I have an email  
17 stating to this, a fact. She granted an extension until  
18 Friday, August 20th to submit redacted packets. I went to the  
19 EMC office at DHRM on Thursday, August 19th. I took the very  
20 packets that I submitted. I redacted the appropriate  
21 information and handed those packets back to the EMC.  
22 (Inaudible) there were no additional packets, no different  
23 packets. I sat there at the DHRM office. I never left the DHRM  
24 office. And I redacted the pertinent information. I would ask  
25 that the committee overrule the objection, as there is no

1 grounds for it. Mr. Santiago had the packet, the agency had  
2 the packet. The agency granted an extension until Friday, for  
3 the redactions. Thank you.

4 S. PARKER: Thank you. And actually, I -- I want to  
5 ask if, um, we can get a copy of that. Because I think I get a  
6 copy, I get copied my emails for extensions. I actually  
7 requested to approve extensions.

8 JOHNSON: Um, Nora Johnson, for the record.

9 S. PARKER: Yes?

10 JOHNSON: Previous practice has been, if an agency -- so  
11 we (inaudible) packet deadline. The morning after that  
12 deadline, we will contact the agency or the employee,  
13 whoever's missing their packet, and state packets were due  
14 yesterday, please advise. They're in the mail, it'll be a day.  
15 Typically, our best practice is that the EMC coordinator can  
16 make that determination. Should an agency or employee need a  
17 significant amount of time for a packet extension, is when it  
18 would be sent to the chair.

19 SANTIAGO: Madam Chair? I'd like to reference page 4 of  
20 this, of the, uh, order scheduling hearing. It says, request  
21 for continuance to be granted a discretion of the chair, only  
22 upon showing good cause. This wasn't left up to the EMC. It's  
23 not up to the EMC's discretion to decide to allow that  
24 extension. It's to the chair, as stated in -- in the document.

25 S. PARKER: Where that scheduling order is (phonetic)?

1 Can you tell me (inaudible)?

2 SANTIAGO: It wasn't included in there. It was in a chain  
3 -- in the chain email. I was advised by the EMC coordinator  
4 that I did not have to submit this as part of evidence, or  
5 part of my packet. The hearing --

6 S. PARKER: (Inaudible) --

7 SANTIAGO: Okay. That's what I think you were looking for  
8 it in there.

9 S. PARKER: Sometimes it's in -- sometimes it's --

10 SANTIAGO: Yeah, it's not in there -- it's not in my  
11 packet. As far as the employer packet, I can't attest to that.

12 S. PARKER: Yeah.

13 C. PARKER: Madam Chair?

14 S. PARKER: Yes?

15 C. PARKER: Carrie Parker, for the record. I'm having  
16 trouble hearing, um, what Mr. Santiago had said. Um, so I  
17 would request what's the issue?

18 S. PARKER: Yes. So, um, thank you, Counsel Parker.  
19 The -- the issue at hand is that the scheduling orders state  
20 that the EMC chair makes the determinations on any extensions,  
21 when needed. And it's in the scheduling orders. And I question  
22 whether or not, um, that email has my communication in there  
23 approving it. Because, typically when there's an ex -- and I  
24 know that I've been asked for extensions, um, and I don't  
25 recall this one. So in your email chain, do you have, uh, the

1 portion that -- in there that I was notified? Okay. I could  
2 read her lips, so, yeah. She's checking. You're on mute.

3 C. PARKER: Sorry. Thank you. Um, for the record,  
4 Carrie Parker. I have an email from Reese Flores (phonetic)  
5 to, uh, myself, copying Dennis -- Denise (inaudible) Seymour  
6 (inaudible). And I would like to clarify that the packet isn't  
7 late. The packet was submitted on time. The request was  
8 correct (inaudible) the redactions. It's the same packet. This  
9 -- the packet was submitted on time.

10 S. PARKER: Okay. Thank you. Thank you. And -- and I'm  
11 gonna make the determination. I mean, I -- I should have been  
12 made -- apprised of that, to know -- to know what was going  
13 on. But I do, uh, unless you can show significant difference  
14 in the packet that you sent -- were sent, initially, other  
15 than the redactions?

16 SANTIAGO: Other than, yeah, the copies are completely  
17 different. Everything's -- Ms. Parker attested here and signs  
18 her own paperwork. And it was page, uh, 9 or whatever, that  
19 these are all accurate and correct, and (inaudible) an exact  
20 copy, which they're not. Some of these modif -- some of these,  
21 um, documents are not -- they're not in color. They're  
22 completely different than what they are. Um, the packet I  
23 received in the mail is right here, since the 17th. And, um,  
24 it's is -- it's completely outta order. Uh, there is still,  
25 uh, personal documentation in this one, both in this and the

1 redacted copy.

2 S. PARKER: Okay. And I did -- I am aware that they  
3 were able to get some of the redacted information. Um, but  
4 what is the significant difference?

5 SANTIAGO: My concern is (inaudible) --

6 S. PARKER: I wanna know (inaudible) is out of order?

7 SANTIAGO: What's that?

8 S. PARKER: Is it only that it's out of order and it  
9 still has information that's not redacted?

10 SANTIAGO: It has both. It's -- it's that and -- in -- in  
11 -- not only that, but the -- the documents have been modified.  
12 And in the legal description, when you define a copy, as Ms.  
13 Parker knows, that every copy that should -- that is handed  
14 out should be exactly the same. Am I -- am I wrong? But all 12  
15 copies were supposed to be exactly the same. So when I was  
16 sent this copy, this is what I based my argument off of, and  
17 it was not correct. And it does not fall within this  
18 parameters, which were said. I was told to adhere to the rules  
19 of this hearing, the EMC coordinator, to the T, and as I  
20 expect Ms. Parker to do, too. I redacted my copy. Um, I  
21 actually have a -- Ms. -- I believe Ms. Parker didn't even  
22 conduct the, um, redaction. The EMC coordinator did. I  
23 received confirmation via email from Ms. Flores this morning.  
24 This is the one -- there is one ladder in the chain that came  
25 in as I arrived, that Ms. Flores was the one that did the

1 actual redaction of the document, not Ms. Parker. So the --  
2 the document was modified after it was received, after the  
3 dead -- it was modified after the deadline. Therefore, in  
4 here, it states no late -- late packets will not be accepted.  
5 The packet is to be accepted, as it was, on the deadline, not  
6 afterwards and redacted. That would've -- if that's the case,  
7 I should have been allowed to go in and modify my documents  
8 afterwards, also. (Inaudible) -- if I had seen something that  
9 was wrong or redacted, I would -- it'd be the same as me. I  
10 would have to write you and ask for permission no later than -  
11 - no more than, or excuse me, at least 12 working days before  
12 the EMC.

13 S. PARKER: Yeah. So just correct.

14 SANTIAGO: And, I believe --

15 S. PARKER: If you sent the information in and it had  
16 been ha -- handled properly, where it actually went from the  
17 EMC, then we would ensure that we tell them, you need to  
18 redact all the information. It doesn't change the content of  
19 the information. It's personal information, or PII, or  
20 whatever.

21 UNIDENTIFIED: Right.

22 S. PARKER: Um, that -- to protect, um, unrelated  
23 parties, as well as yourself, on -- on different items. Um, I  
24 -- I -- I still wanna know what the significant differences  
25 are. What -- because you're telling me that they are -- that

1 she modified the documents. Did it change any dates? Did it  
2 change content, other than (inaudible) --

3 SANTIAGO: (Inaudible) it makes it a little bit less  
4 legible for me to prove -- prove one of my points, because one  
5 of the copies is -- is kind of illegible in the packet that's  
6 provided. Do you believe yours -- this is the redacted  
7 version. If we go to exhibit A, which is the written  
8 reprimand. Excuse me, exhibit A.

9 S. PARKER: Oh, let's see.

10 SANTIAGO: Excuse me.

11 S. PARKER: Yes.

12 SANTIAGO: Uh, exhibit B. That should be, uh, NDOT's  
13 incident and routing sheet. Or I believe they were called the  
14 incident report. If we flip through this, some of these  
15 documents, like this are -- I don't know what -- well, what  
16 was modified outside of her turning it in, um, I didn't really  
17 have the full time to go through it. But if you look -- what  
18 is, is your copy black and white?

19 S. PARKER: Yeah.

20 SANTIAGO: Okay. So see this is afterwards. This -- this -  
21 - this document was completely modified, because the one I  
22 have in here is color. So we can sit down and we can go  
23 through all this and see which documentation was removed and  
24 which is not. But that would take a very long time. My theory  
25 is, that was not -- that was not turned in correctly.

1 S. PARKER: (Inaudible) that we can't (inaudible)? Oh,  
2 oh.

3 SANTIAGO: See what I'm saying? The packets are completely  
4 different, so --

5 S. PARKER: Yeah, no, they are color. She just turned  
6 another page (inaudible) --

7 SANTIAGO: Right. Exactly. This has been modified, because  
8 this is the packet that was originally given to by Ms. Parker.

9 S. PARKER: I can see (phonetic).

10 SANTIAGO: So we're in Exhibit (inaudible). This is was a  
11 redacted copy. This is not. (Inaudible) through this. A lot of  
12 this -- a lot of these portions of this still do include  
13 personal information. See this -- a copy. I don't know if you  
14 can go to the -- on page four (inaudible). On page  
15 (inaudible). (Inaudible) still. All the documents were  
16 modified after they were received. That's -- according to the  
17 EMC guidelines, that's not correct.

18 S. PARKER: Yeah. So tell me about -- I -- I want --  
19 modification, to me, is that they changed information in here.  
20 If redaction -- redaction was not modification.

21 SANTIAGO: (Inaudible). Right. But according to this  
22 document right here, the -- the document submitted must be  
23 redacted prior to the submission of the -- to the EMC. So this  
24 -- this document that was redacted, was not redacted prior to  
25 the submission to the EMC. Therefore, it does not meet the

1 guidelines set forth in this hearing -- these hearing orders.

2 BAUER: Ms. Chair, this is Jennifer. May I ask a  
3 question?

4 S. PARKER: Yes, yes.

5 BAUER: Um, sorry. (Inaudible). Oh, um, actually, this  
6 is probably a question to be helpful of, um, DHRM staff. I  
7 believe (inaudible) have been a redaction of personal  
8 identifying information dealt with before with EMC  
9 proceedings, especially during, um, the height of the  
10 pandemic. We were hosting meetings virtually and documents  
11 were publicly posted. Has there been any, um, issue like this  
12 previously?

13 JOHNSON: Uh, again, I was not the EMC coordinator during  
14 the pandemic. I would have to defer to Bruce Flores.

15 SANTIAGO: Madam Chair, when I turned in my packet on the  
16 date of deadline, I turned it in about 4:30 in the afternoon.  
17 Um, I basically turned it in to Ms., uh, Flores. All my  
18 packets, if you have them, should -- they should be numbered,  
19 uh, 1 through 12, I believe. That's to ensure that they're --  
20 the accuracy and that my documents have not been tampered  
21 with. That -- the AG's office, from Ms. Parker, did not do  
22 that same thing. Each document's been modified, individually,  
23 by them manually, uh, editing the redacted copy. Some of these  
24 copies actually have physical whiteout on them. That questions  
25 Ms. Parker's credibility, as far as all these documents

1 matching, due to the fact that these have all been modified  
2 separately. There may be something in Ms. Bauer's packet that  
3 is completely different than what is edited out of your  
4 packet, in Ms. Parker. I asked Ms. Flores, on the deadline, at  
5 4:30, if there was anything that needed to be redacted from my  
6 package. And she stated, no. She said that she had not  
7 reviewed Ms. Parker's, that she would, and that if there was  
8 any redacting information, that it would not be allowed. I was  
9 unaware of any sort of changes or anything, until I got this  
10 second packet, and I compared it with this packet that was  
11 mailed to me on August 17<sup>th</sup>, through certified mail or whatnot.  
12 But it was complete -- this packet, when I started looking  
13 through this packet, it ended up being completely different  
14 than this redacted packet. My concern is, if we're gonna  
15 follow the protocols, which we just read -- went and  
16 referenced NAC to figure out what was gonna happen if we were  
17 hung, we're going by the book. If the state did not fault --  
18 if the DOT's representation did not follow the (inaudible), or  
19 the protocols, which NDOT's kind of developing a track record  
20 of them, is this is not being followed, what good is this in  
21 setting hearing orders for other cases, like -- as Ms. Bauer  
22 says, down the road -- we allow an employer to modify a  
23 document after it's been submitted. Are we gonna continue that  
24 down the road, and make that a precedent? Because if we are,  
25 that -- this document pretty much becomes null and void at

1 that. If we allow employers to go modify stuff after a  
2 deadline and not notify an employee that, hey, we went in and  
3 we modified our packet, we realized we messed up. Maybe you  
4 should do the same. We're okay with it. We spoke with the --  
5 with the chair. Um, can -- you know, this is -- let's -- let's  
6 communicate about this. There was no communication. We went in  
7 and we -- this was redacted, apparently upstairs, at a later  
8 time, after the deadline. If the -- if the document is  
9 modified and resubmitted after the deadline, that is a late  
10 packet. That is the definition of late. That's like going to  
11 school and changing your test. You wouldn't go to your  
12 professor and say, hey, I learned that answer on my way out  
13 the door from somebody else. Can I change my test? It's the  
14 same instance here. This documentation was modified after the  
15 submission. The EMC board is not in accordance with the order  
16 scheduled hearing. I adhered to this hearing to the utmost of  
17 my ability. (Inaudible) all packets (inaudible). There's 12  
18 copies, they're all numbered. All my -- all my documentation,  
19 I can attest is correct. And there was no redacted  
20 documentation of mine. Not one redaction was made on behalf of  
21 me, by Ms. Flores, because I followed this. This is my problem  
22 with the DOT, is they continue to modify stuff after it's been  
23 admitted. I proved that in that hearing that's dismissed. But  
24 I'd like to -- if any -- if we -- if we're gonna dismiss it,  
25 let's dismiss it. Otherwise, I'll go through it and I'll point

1 out what's wrong with it.

2 S. PARKER: Thank you. Thank you.

3 BAUER: Ms. Chair, this is Jennifer.

4 S. PARKER: Yes?

5 BAUER: I recognize that this is solely your decision.

6 If you're interested, I -- I might offer some of my concerns,  
7 as a tenured member of this committee?

8 S. PARKER: Absolutely. Please.

9 BAUER: Um, I think this is a serious concern. Um, I  
10 think this is a serious issue that I wanna make sure that we  
11 handle delicately, um, and -- or you, sorry. Um, in advice to  
12 you, um, but the grievant is correct. My packet does have  
13 physical white out. So, um, I don't know about going through  
14 each and every packet that we have, with that -- with any  
15 level of certainty, that in fact, the redaction was consistent  
16 for every packet. And that, in fact, the redaction, um, is the  
17 same that he has, himself. So, um, because EMC decisions are  
18 subject to petition for judic -- judicial review in a court of  
19 competent jurisdiction, I think we need to handle this  
20 delicately. And, um, I have concerns that we can't -- we can't  
21 feel comfortable that content wasn't changed. It was a simple  
22 reaction of personal identifying information.

23 S. PARKER: I tend to agree. I tend do agree. Any  
24 comments by members -- any other members?

25 DAVIES: Madam Chair, I'm -- I'm just looking at some of

1 these redactions.

2 C. PARKER: (Inaudible) --

3 S. PARKER: Excuse me. Counsel Parker, please --  
4 please, uh, refrain until recognized. Hold on a sec. Go ahead,  
5 Co-chair Davies.

6 DAVIES: Uh, uh, I don't wanna -- I'm just -- if  
7 someone's got something else to say, I'll wait. I'm --

8 S. PARKER: No, I'm polling members right now.

9 DAVIES: Oh, okay. Thank you, ma'am. Uh, thank you Madam  
10 Chair. Um, I'm just looking at these redactions, and -- and,  
11 uh, as -- as I'm sure Mr. Weiss will, if he'll give me a pair  
12 of eyes, we're -- we're clearly -- we're -- we're having  
13 effort to obfuscate the information here. We've got a black  
14 marker, then whites out, which I would say was done  
15 afterwards. And then, if you flip the page over, you can read  
16 it. It's in reverse. But, you know, little Sherlock Holmes  
17 mirror work. So the redaction seems to have been done after  
18 submission. Um, because, if I was in charge of generating  
19 this, I would've redacted it before photocopying it. And I  
20 feel that we should err -- err on the side of caution in this  
21 case. And we've had many discussions about timelines and  
22 submitting evidence. Um, uh, and, uh, we've been counseled on  
23 -- on what the -- that the lines are hard. Um, and that they  
24 shouldn't -- they should be observed. So I feel that, uh, it's  
25 your decision, Madam Chair. Uh, but I think, uh, there is a

1 case to be made here that the correct decision is to, uh,  
2 allow the, uh, grievant's complaint. Thank you.

3 S. PARKER: Absolutely. Thank you. Thank you. And  
4 then, um, Member Scott, did you have any comments that you  
5 wanted to make, so I can finish polling members?

6 SCOTT: I acknowledge that I do have the physical  
7 whiteout, and it looks like blackout charges for us. So I -- I  
8 defer to the, uh, tenured members of the committee, and Madam  
9 Chair, your decision on this, in the grievant's complaint. I -  
10 - they -- they are different. I have some color, mostly black  
11 and white, on my packet. So yeah, I defer you, Madam Chair.

12 S. PARKER: Thank you. All right, Counsel Parker, you  
13 had a comment that you wanted to make, or question?

14 C. PARKER: Yes. Thank you, Madam Chair. Carrie  
15 Parker, for the record. As I, um, submitted, I apologize for  
16 the mistake. I went to the DHRM office and I was aware, ahead  
17 of time, of some pages that needed to be changed, based on,  
18 um, date of birth and, um, some other personal information  
19 from the third party who was involved in the collision. So  
20 some of those pages I had brought with me, um, that were  
21 redacted. Upon getting there and talking with Ms. Flores, I  
22 learned that there were other issues, as well. Um, in speaking  
23 with Ms. Flores and Denise (inaudible) Moore, um, we  
24 determined that the best way to redact would be black marker  
25 and white, um, correction tape. Um, so I took pages out that I

1 had brought with me to replace. And again, his date of birth,  
2 um, employee ID or address, any other personal information  
3 that might have been -- the police report for the collision.  
4 And then the other pages, uh, I used the marker and the white  
5 out. There were no material changes. If you look, you can see  
6 there, uh, places where date of birth or other identifying  
7 information would be. Um, I would request that if the  
8 committee is inclined to strike any exhibits, to be specific  
9 as to which exhibits. I would also note that Mr. Santiago has  
10 provided some of the same exhibits, including the written  
11 reprimand and the, um, prohibitions and penalties. So I would  
12 request that the EMC be specific, um, if there are certain  
13 exhibits that are at issue. I would also submit that when I  
14 came to the DHRM, you know, there was a file box full of 12  
15 copies of packets, and I redacted for four hours. Uh, and it  
16 was, as an effort, to conserve state resources to not re-print  
17 12 packets. Um, Mr. Santiago had the full, unredacted packets.  
18 They were emailed to him by my assistant. They were mailed to  
19 him. He's conceded that he has them. And again, I do apologize  
20 for not redacting them before they would sub -- they were  
21 submitted. But my packet was submitted on time. There are no  
22 material changes. It's only personally identified information  
23 that is redacted out. Thank you, Madam Chair.

24 S. PARKER: Thank you. Thank you. So -- and I -- I --  
25 everybody's concerned about this.

1           DAVIES:     Under -- understand --

2           S. PARKER:       And -- and -- and -- and I -- I commend  
3 you for your apology, Counsel Parker, as well, and your  
4 attempt to fix something at the last minute. However, we do  
5 have guidelines that we actually have to comply with. We've  
6 had to deny people the ability to submit things that were even  
7 a day late. So I would say, anything that was submitted after  
8 that date, which would be the redacted documents, would have  
9 to actually be removed. Um --

10          SANTIAGO: Madam Chair, in response to Ms. Parker's  
11 statement about the, uh, written reprimand, I spoke with, uh,  
12 the EMC coordinator and -- and questioned if employee numbers  
13 were allowed in my packet. And she stated, yes, the employee  
14 number was allowed. That's not a personal identifying point.  
15 Okay. So that's -- that should be the only, uh, quote-unquote,  
16 "personal information," that Ms. Parker is referring to in my  
17 packet. The -- the email this morning from the EMC  
18 coordinator, Ms. Flores, stated there was no redactions made,  
19 and none needed, on my behalf, of my packet. So, my packet  
20 should be in order, uh, and ready for the EMC (inaudible) to,  
21 uh, review or see.

22          S. PARKER:       Okay. Thanks.

23          C. PARKER:       Madam Chair.

24          S. PARKER:       So that -- go ahead. As long as it's not  
25 redundant.

1 C. PARKER: I -- I apologize. I did not mean to imply  
2 there was anything wrong with Mr. Santiago's packet. I was  
3 just saying there were some of the same documents. That's all.

4 S. PARKER: Okay, thanks. So, I -- I think what we  
5 need to do is go through, and anything that has been redacted  
6 in -- in, uh, Counsel Parker's packet, or NDOT's packet, needs  
7 to be removed, and we won't be able to reference it. That --  
8 that's what I feel safest with doing. And -- and again, and  
9 you're right, the scheduling orders do say that. It's up to  
10 the chair's discretions, though. And I -- I -- I was not aware  
11 of it. I get so many emails, that's why I asked.

12 UNIDENTIFIED: Right.

13 S. PARKER: So if I had been copied -- so I don't  
14 know. But, um, you clarified that, so. Okay, so --

15 BAUER: Ms. Chair, this is Jennifer.

16 S. PARKER: Yes?

17 BAUER: May I ask a question?

18 S. PARKER: Absolutely.

19 BAUER: Um, so if the grievant's objection to the  
20 entire packet is based, in part, on the redaction that  
21 occurred, and in part in the material differences between the  
22 packets, um, are you going to ask specifically for each page  
23 that is the objection to be removed --

24 S. PARKER: Yes.

25 BAUER: -- instead of the whole packet?

1 S. PARKER: That's what I'd like to ask for, because  
2 the -- the other parts were submitted in a timely manner.  
3 Correct? Can you get -- can you help me with that?

4 SAMTIAGO: Well, my -- my concern is the actual packet  
5 that we are reviewing was submitted after the redacted copy,  
6 in its entirety -- was submitted after. So I'm requesting that  
7 that entire document -- because it becomes incomplete at that  
8 point. because it -- throughout this doc -- through Ms.  
9 Parker's statement, if she references exhibit K or L or  
10 whatever it might be, I'm just using those as examples, that  
11 it -- it renders -- and that exhibit's been removed -- it  
12 renders that documentation null and void, and her statement  
13 null and void, on the grounds that there is nothing supporting  
14 that argument. Ms. Parker was advised of what this -- each  
15 packet had to be, and it -- it doesn't meet that standard. So  
16 as the packet was submitted, the packet is incorrect and  
17 should be removed, in it's entirety, from front to back.

18 S. PARKER: I'd like to compare them. Okay. Okay. Um,  
19 so I -- I wanna take a little bit of a recess, unless the DAG  
20 wants to make any recommendation or any comments?

21 WEISS: Not at this time, Madam Chair.

22 S. PARKER: Because I just want to, uh, compare the  
23 two and see the difference. The one that was received on time  
24 --

25 SANTIAGO: Yes, ma'am, that is --

1 S. PARKER: That's -- is that that one?

2 SANTIAGO: Yes, ma'am. Uh, this is the redacted. This is  
3 the one that was mailed, that was turned into (inaudible), yes  
4 ma'am. This was supposedly received on time.

5 S. PARKER: But they're all different. Yeah.

6 SANTIAGO: Yes, ma'am. There's three --

7 S. PARKER: (Inaudible) --

8 SANTIAGO: -- there's three different documentations that  
9 was provided -- the one that was emailed, the one that was  
10 received in physical copy, and then there's the redacted  
11 version.

12 S. PARKER: Now, you're saying all three of them are  
13 different?

14 SANTIAGO: They're all different. The emailed copy, I  
15 didn't bother printing, because I didn't think we were gonna  
16 go through 300 and something pages of documentation. I  
17 understand people have lives (inaudible) to tonight. But like  
18 I said, my concern is the packet, in its entirety, does not  
19 meet the standards set forth in the hearing orders. Took us  
20 all a lot of time -- I understand Ms. Parker spent a lot of  
21 time, but I'm trying to follow this procedure, to the T, and I  
22 -- that's the only way we can ensure that.

23 S. PARKER: Exactly right.

24 SANTIAGO: I don't believe the -- the burdens on the EMC  
25 to edit the packet that was submitted by a party. I wouldn't -

1 - if I was the employer, I wouldn't want the employee to have,  
2 you know, I wouldn't want the EMC to have to correct my packet  
3 or vice versa, of any party. That's not in the EMC's  
4 definition.

5 BAUER: Ms. Chair, this is Jennifer.

6 S. PARKER: Yes?

7 BAUER: The (inaudible) -- yes, that's all over the  
8 place for you, if you're interested?

9 S. PARKER: Yes.

10 BAUER: I, um, I, if I were in your place, would, um,  
11 be a little bit uncomfortable about going through the entire  
12 packet, because, um, counsel for the employer is here  
13 virtually, instead of in person.

14 S. PARKER: Oh, yeah.

15 BAUER: Um, I also think -- and this is less than two  
16 cents, so take it for a grain of salt -- but in looking at the  
17 employee's packet and the list of exhibits, the written  
18 reprimand is present, the grievance and responses are present,  
19 probations and penalties are present, um, emails, et cetera,  
20 are all present. So I feel like the substance of the case  
21 could possibly even be argued with just the grievance packet,  
22 which is not disputed.

23 S. PARKER: You -- you're right. But I also wanna ask  
24 a question about the grievance packet, because, um, you had  
25 made a comment that you had 12 sections, and I only have 10.

1 SANTIAGO: No, ma'am, I have 12 copies.

2 S. PARKER: Oh, copies. I'm sorry.

3 SANTIAGO: Yes, ma'am. You're all right. I -- I --

4 S. PARKER: I -- I misunderstood.

5 SANTIAGO: -- I numbered each copy, too, I believe.

6 S. PARKER: Okay.

7 SANTIAGO: So that -- that -- that ensures that there's no  
8 difference throughout the entire process.

9 S. PARKER: Nice. Okay. Thanks. All right, I -- and I,  
10 you know, I, yeah, actually, I think that's -- that's what  
11 we're gonna have to do. So, I think, actually that is what I'm  
12 gonna rule, that we actually eliminate the Department's packet  
13 and use the employee's exhibit packet. Uh, Counsel Parker, do  
14 you need time to review the grievant's packet before we move  
15 forward, to -- to accommodate your presentation or?

16 SANTIAGO: Here's their packet (inaudible) --

17 S. PARKER: Because we won't be able to refer to  
18 anything in the packet that you submitted -- the redacted  
19 packet.

20 C. PARKER: Um, Deputy Attorney General Carrie Parker  
21 for the record. So do I understand correctly, that the EMC  
22 Chair is striking the entire, um, NDOT packet, even though it  
23 was submitted, originally, on time?

24 S. PARKER: And what I have is not what is -- what was  
25 originally submitted on time. I don't have that verification.

1 And -- because you're not here in person, I don't feel  
2 comfortable determining which parts are gonna stay and which  
3 parts are not, without both parties, uh, approving. If -- if -  
4 - that appro -- if the request to make the changes after the  
5 deadline were submitted to me, I would also ask that both  
6 parties be able to review them. So it -- we're -- we're  
7 lacking that approval, and the fact that our copies are  
8 different. I think there's three different sets, is what has  
9 been shared here today. And so, yes, we are not using the  
10 packet that was submitted by -- by NDOT.

11 C. PARKER: Um, well --

12 SANTIAGO: Madam Chair?

13 C. PARKER: -- in the interest of time, um, I would  
14 like to just lodge my objection, for the record. I understand,  
15 um, that you are overruling it. Um, and we can proceed on -- I  
16 have, um, Mr. Santiago's packet. Uh, I am prepared, uh, to  
17 proceed, based on that, and also witness testimony. I dispute,  
18 um, that I do not have another way to prove the information  
19 that's in my packet.

20 S. PARKER: Okay.

21 SANTIAGO: I'd like to object that part of that packet is  
22 the list of witnesses. And instead of wasting their time any  
23 further, I believe that (inaudible) thrown out the list of  
24 witnesses, or the witnesses should be released, too. You don't  
25 need your witnesses?

1 SANTIAGO: They're none of my witnesses. I don't -- I  
2 don't need a witness. I have the documentation right here.  
3 That's part of the packet, is the list of witnesses.

4 S. PARKER: Oh. Oh, yeah. So --so there's no list of  
5 witnesses.

6 C. PARKER: Madam Chair? The pre-hearing statement is  
7 exactly the same. It's exactly the same as what was submitted,  
8 originally. Mr. Santiago's objections were related to  
9 redactions of personal information on the exhibits -- pre-  
10 hearing statement with the list of witnesses, what the  
11 arguments are, should remain.

12 S. PARKER: Actually, I -- I -- I -- I'm agreeing with  
13 that. Do you have any issues?

14 BAUER: So she --

15 S. PARKER: She -- what she is saying -- stating is  
16 she submitted her list of witnesses by the deadline.

17 SANTIAGO: Let me just -- excuse me, Madam Chair, but  
18 isn't it also part of that packet that we just struck?

19 S. PARKER: Hold on a sec. So written statements could  
20 be, but --

21 BAUER: Ms. Chair, this is Jennifer. Just -- just for  
22 clarification, um, is the matter at hand right now that the  
23 objection is because the pre-hearing statement was not  
24 modified at all, including the reactions, or anything? And if  
25 that's the case, then we could actually allow that into this

1 discussion, into this hearing, but all subsequent documents  
2 should be stricken? Is that what the decision is?

3 S. PARKER: Yes, and I -- and I think that's what  
4 she's asking, too, um, and least partially. But, and I may you  
5 throw it away, too, didn't I? Oh, okay. And so, I do want the  
6 opening statement. I know that -- or the -- the -- the initial  
7 presentation, we do wanna enter that back in. Uh, any  
8 attachments to that would be removed.

9 SANTIAGO: Madam Chair, at that point, wouldn't we be  
10 modifying that packet that was submitted, that we threw out,  
11 because it has the list of --

12 S. PARKER: We would be removing --

13 SANTIAGO: -- but it has a list of the witnesses. I  
14 thought we removed that packet, in its entirety. The packet  
15 submitted, contains the list of witnesses.

16 BAUER: Ms. Chair, this is Jennifer.

17 S. PARKER: Yes?

18 BAUER: Also historical information, for your  
19 reference. Um, committee chairs have sustained objections to  
20 (inaudible) and parcel.

21 S. PARKER: And that -- that, yeah, that's what we're  
22 gonna do, actually. I just wanna see it first.

23 BAUER: No problem. I'm just -- I'm just here to help  
24 you.

25 S. PARKER: Thank you. I appreciate it. I do

1 appreciate it.

2 THOMPSON: Nora Thompson, for the record. What are we  
3 looking to clarify? What part did you want to see?

4 S. PARKER: Just the -- the initial submission. So it  
5 is --

6 THOMPSON: (Inaudible). For verification, Mr. Santiago,  
7 this was your copy?

8 SANTIAGO: Yes.

9 THOMPSON: Okay.

10 S. PARKER: Take a look at it (inaudible).

11 THOMPSON: Again, for the record, once it's determined  
12 what's back in the record, I'll make sure that you have the  
13 pages (inaudible) --

14 SANTIAGO: Okay.

15 THOMPSON: -- the document.

16 S. PARKER: Okay, so can, um, Counsel Parker, on page  
17 9 of 9, of your -- hold on. Um, page 9 of 9, there's a  
18 redaction. Can you explain the redactions.

19 C. PARKER: I'm sorry, Madam Chair. Um, page 9 of --  
20 9, of the pre-hearing statement?

21 S. PARKER: Yes. So it's certificate of service. Can  
22 you tell me --

23 C. PARKER: (Inaudible) if I (inaudible) Mr.  
24 Santiago's address should be redacted?

25 S. PARKER: (Inaudible).

1 SANTIAGO: I would have to -- this will be -- from here to  
2 this one, but I thought --

3 S. PARKER: Yeah, let's do it. That's the original,  
4 right?

5 SANTIAGO: Which page are you referencing?

6 S. PARKER: Um, page 9 of 9.

7 SANTIAGO: Yes ma'am.

8 S. PARKER: Is that your address that was retrac -- re  
9 -- uh, redacted?

10 SANTIAGO: Yes ma'am.

11 S. PARKER: And then, also, Employee Management  
12 Committee -- Council Parker, what was omitted there?

13 SANTIAGO: (Inaudible). I'm trying to find out where  
14 (inaudible) --

15 S. PARKER: Right underneath that, under furthermore.

16 SANTIAGO: Yeah, it says, uh, furthermore -- yeah, that's  
17 still there. That's (inaudible).

18 S. PARKER: What -- what under employee management  
19 committee, attention Breece Flores, 100 North Stewart Street,  
20 what under that was redacted?

21 SANTIAGO: The e -- uh, via emails as follows. EMC --

22 S. PARKER: Oh, with her email address?

23 SANTIAGO: -- EMC -- yeah, it's an e -- it's a email  
24 chain.

25 S. PARKER: And then -- okay, right above that?

1 SANTIAGO: It just says via email, as follows.

2 S. PARKER: Right above that?

3 SANTIAGO: (Inaudible) EMC committee, attention, produce  
4 orders. That's all I have. I don't know if the document you  
5 have is modified separate.

6 S. PARKER: Oh, this is what I was asking.

7 SANTIAGO: Oh, that there --

8 S. PARKER: (Inaudible) that was.

9 SANTIAGO: Oh, the address. I -- the second part of it.  
10 You see I was --

11 S. PARKER: Oh, Carson Ci -- okay. Thanks.

12 SANTIAGO: Once again, I think that demonstrates that --

13 S. PARKER: So that's the original, that's what --

14 SANTIAGO: Yes, ma'am.

15 S. PARKER: -- we're using, and this is the part of  
16 that that we're gonna be using.

17 SANTIAGO: You're gonna use that. Okay.

18 S. PARKER: But this section. So it's only the pre-  
19 hearing statement. I don't have an issue. Anybody has concerns  
20 with the parts that were redacted, that we've identified now?

21 UNIDENTIFIED: And change --

22 S. PARKER: So, for the record, we are going to, um,  
23 disallow a portion of the packet. And it is section --  
24 exhibits A through R, and allow the pre-hearing statement.

25 UNIDENTIFIED: (Inaudible)?

1 S. PARKER: Yeah, (inaudible), sorry. That  
2 (inaudible). So you guys, um, uh, Co-chair Davies?

3 DAVIES: Yes, ma'am?

4 S. PARKER: So the section, or the first section of  
5 NDOT's packet that was submitted, um, is the pre-hearing  
6 statement, pages 1 through 9.

7 DAVIES: Got it.

8 S. PARKER: Now that's what will be allowed. The rest  
9 is stricken.

10 DAVIES: Yes, ma'am. Thank you, Madam Chair.

11 S. PARKER: There are the witnesses in here  
12 (phonetic).

13 C. PARKER: Macam Chair?

14 S. PARKER: Yes? Yes, Counsel Parker?

15 C. PARKER: There are exhibits within there that have  
16 no redactions. For example, R is just, um, statutes and  
17 regulations. So, um, to clarify, all exhibits are being  
18 stricken?

19 S. PARKER: Yeah. Uh, the only thing that we're going  
20 to allow, is this pre-hearing statement. So the answer to your  
21 ans -- to your question is yes, we are going to not allow the  
22 additional exhibits. I think you made reference to them in  
23 your pre-hearing statement.

24 C. PARKER: Okay.

25 SANTIAGO: Thank you.

1 C. PARKER: Oh, I know. We're not having ex parte  
2 communications. I just called -- Nora Breece. I'm so sorry,  
3 Nora, Nora --

4 BAUER: And again, for clarification, there are no  
5 objections to the employee's packet? They -- were that, as a  
6 matter of public record at this time?

7 C. PARKER: Um, yeah, that's the next question. Yes,  
8 because we didn't do that yet. We haven't done that yet. So  
9 are there objection -- go ahead, Counsel Parker.

10 C. PARKER: I'm sorry, Madam Chair. Carrie Parker for  
11 the record. Um, If I could just -- I do have an objection to -  
12 - in -- in exhibit 9 of Mr. Santiago's packet, attached to  
13 his, um, grievance, step two response, were photos. Um, the  
14 Department of Transportation objects to these photos as being  
15 unrelated, um, irrelevant, and not bearing on the grievance.  
16 These photos are described as other incidents involving other  
17 employees about which Mr. Santiago is complaining. Um, they  
18 are not related at all to the incident of backing collision.  
19 And the in, uh, Department of Transportation moves to strike  
20 those photos, as being irrelevant and not bearing on the  
21 grievance, pursuant to -- to NAC 284.655. Thank you.

22 S. PARKER: Thank you. So Mr. Santiago?

23 SANTIAGO: Yes, ma'am?

24 S. PARKER: So, um, first I wanna ask you a question  
25 about the witnesses. Witnesses are mentioned in the pre-

1 hearing statement, so we need you to stay. We'll -- we'll --

2 SANTIAGO: Okay.

3 S. PARKER: -- try to get this moved on as quickly as  
4 possible. Apologize. Um, but do you have a response about  
5 these pictures in section 9?

6 SANTIAGO: Uh, I'm trying to find the reference where it  
7 states that I must, uh, that the transmittal of -- or excuse  
8 me, a copy of the grievance, in its whole must be submitted.  
9 Uh, if that was submitted, it's also -- I believe it states  
10 someplace in this, that -- in the order scheduling, that that  
11 must be in (inaudible), the grievance, in its whole, must be  
12 provided before the EMC committee. That's why those documents  
13 are -- are included in there.

14 S. PARKER: So are you -- are you saying why the  
15 pictures are relevant? She's -- she's arguing that they're not  
16 relevant?

17 SANTIAGO: Well, they will be proved evident, because the  
18 reason why I wrote up, or was attempted to be wrote up, was  
19 gross -- that I was exhibiting gross negligence and willful  
20 destruction of state property. Willful, as we've described,  
21 means, like intent, right? So those pictures exhibit willful  
22 destruction of property, when there's a sticker of an  
23 organization that has -- that doesn't deal with the State of  
24 Nevada, doesn't -- doesn't participate. Not the State of  
25 Nevada proof sticker that's on there. And yet, an employee put

1 that on there and was allowed to put that on there. But I get  
2 wrote up for willful destruction.

3 DAVIES: Madam Chair?

4 SANTIAGO: In my defense --

5 S. PARKER: So --

6 SANTIAGO: -- that's willful destruction, to a T. That is  
7 willfully putting something and destroying state property.

8 S. PARKER: Okay.

9 DAVIES: Madam Chair?

10 S. PARKER: Yes, Co-chair Davies?

11 DAVIES: Uh, thank you for hearing me. Um, um, banging  
12 my head against the wall here. Okay? The counsel is objecting  
13 to pictures that were in her evidence packet. So it -- under  
14 Exhibit N, that were -- what were thrown out, are the exact  
15 same pictures, only they're much nicer, in and glorious color,  
16 without the redaction of, uh, DOT license plates. So I don't  
17 understand counsel's objection to these photos, when she  
18 provided these photos in her evidence. Can someone please  
19 explain that one to me?

20 C. PARKER: Madam Chair?

21 DAVIES: I'm looking at the exact same pictures. If you  
22 look in the evidence that we threw out, in N, which counsel  
23 provided, is now being objected to. Does -- counsel not  
24 familiar with her own evidence?

25 S. PARKER: So Coun -- Council Parker, do you wanna go

1 ahead (phonetic) -- respond to that please?

2 C. PARKER: Thank you, Madam Chair. I attached the  
3 grievance, in its full. And in my pre-hearing statement, I did  
4 lodge the objection to those photos.

5 S. PARKER: So -- and I'm gonna ask the question, too.

6 DAVIES: Oh.

7 S. PARKER: This is part of -- go ahead, I'm sorry.

8 DAVIES: No, no. I just got some clarity. Thank you.

9 S. PARKER: Thank you. And I just want to get  
10 clarification. Were these photos part of the grievance  
11 process?

12 SANTIAGO: Yes, ma'am.

13 S. PARKER: They're not in addition, afterwards, to  
14 substantiate? These were actually submitted through the  
15 grievance -- and I'm talking about steps 1 through --

16 SANTIAGO: Yes, ma'am. They were submitted, step 1 through  
17 3, and should reflect that in the log of the grievance that's  
18 attached. That is attached (inaudible).

19 C. PARKER: (Inaudible). NDOT does not dispute that.  
20 NDOT's point is, they're irrelevant to the grievance and  
21 should not be considered by the EMC.

22 S. PARKER: Okay. And I -- I -- I -- so I -- I am  
23 gonna overrule that. And I -- because it's part of the griev -  
24 - and I'm doing this because it's part of the grievance, so  
25 part of the grievance packet, it wasn't an addition to help

1 prove his case, um, to come to the EMC. I'm gonna allow it and  
2 if you have objections, based on his testimony at that time,  
3 you can -- you can lodge it then. That -- that's what --

4 JOHNSON: Madam Chair, Nora Johnson, for the record?

5 S. PARKER: Yes?

6 JOHNSON: Just for clarification -- the grievance packet  
7 will be the employee, Mr. Santiago's packet, will be submitted  
8 as a matter of public, record in their entirety.

9 S. PARKER: Yes.

10 JOHNSON: For the agency, pre hearing statement, pages 1  
11 through 9. Everything else is stricken.

12 S. PARKER: Correct.

13 JOHNSON: Thank you.

14 S. PARKER: And Nora, do you need that the -- that the  
15 agency can utilize the employee's packet?

16 JOHNSON: Um --

17 S. PARKER: Is that necessary?

18 JOHNSON: No it's okay.

19 S. PARKER: Thank you.

20 JOHNSON: For a matter of record, this packet will be  
21 here for any witness references, when and if any should be  
22 called.

23 S. PARKER: Okay. And I'm to understand that three in  
24 front here, these three gentlemen here, right here, are the  
25 witnesses, correct?

1 UNIDENTIFIED: Yes, ma'am.

2 S. PARKER: Um, and could you state your name please?

3 PEARD: Jason Peard.

4 S. PARKER: Okay.

5 BURGE: Brad Burge.

6 S. PARKER: Okay.

7 SANTOS: Craig Santos.

8 S. PARKER: Awesome. Okay. I'm just gonna do a quick  
9 swearing in. If you guys, um, and after I say this, just say  
10 your name. You can say your last name if you want. Uh, then  
11 yes or no. Do you swear to tell the truth and nothing but the  
12 truth?

13 PEARD: Jason Peard. Yes.

14 BURGE: Brad Burge. Yes.

15 SANTOS: Craig Santos. Yes.

16 S. PARKER: Thank you so much. Appreciate it. Okay, so  
17 we're gonna go ahead and get started, then. Um, we'll start,  
18 again, by the opening statement by Mr. Santiago --

19 SANTIAGO: Okay.

20 S. PARKER: -- the grievant.

21 SANTIAGO: Uh, I Barron Santiago, am grieving the written  
22 reprimand issued to me on February 3rd, 2020, Mr. -- by Mr.  
23 Santos, supervisor one, with Department of Transportation. I  
24 filed this grievance, and due to continued harassment,  
25 retaliation, abuse of power exhibited by Mike Feast

1 (phonetic), Eden Lee (phonetic), Jason Peard, Craig Santos,  
2 and Dan Kerner (phonetic). I believe that Mike Feast has  
3 continuously singled me out and targeted employees, such as  
4 myself, that has spoken up about misconduct in the workplace.  
5 This is against law and is protected in the Whistleblower Act.  
6 In the past, I've provided both written and audio proof of  
7 misconduct, which has resulted in demotion and termination of  
8 other employees, due to their misconduct. And due to these  
9 actions, I believe the named staff has been directed by Mike  
10 Feast to go out of their way to retaliate through abuse of  
11 power towards me at any chance can. For example, involuntary  
12 transfers, written reprimands, letters of instruction, days  
13 off without pay, et cetera. This has forced me to leave the --  
14 the division, which I plan to spend my entire career at. I  
15 plan to provide written documentation, provided by myself, and  
16 reference other state documents, such as NDOT safety manuals,  
17 exhibit 6 in my packet, safety committee meetings, exhibit 2,  
18 written rep -- written reprimand, exhibit 1, and emails,  
19 exhibit 4. Throughout this process, I've been assured by all  
20 staff involved that all -- all (inaudible) procedures have  
21 been followed. I have proved that to be incorrect, at the --  
22 as they have retracted and reversed some of the disciplinary  
23 actions, due to the poor and inaccurate handling of this  
24 incident. In one event, on December 19th, I was called to Mr.  
25 Peard's office to sign paperwork, only to be told, "you're --

1 you're good," quote, unquote. Sorry to bother you, by Mr.  
2 Santos. I was later told by my supervisor at the time, Raymond  
3 Dragu (phonetic), that he was informed that it was for a  
4 written reprimand, exhibit 1, later issued to me. Raymond  
5 informed me by -- by maintenance continuing to visit and  
6 request my presence, might reflect bad upon my new chain of  
7 command. I'm still unclear that it's even allowed, as I no  
8 longer work in the -- in maintenance and was not subject to  
9 their chain of command. After returning to my visit there, I  
10 emailed Carrie Parker about the incidents and later received a  
11 call from herself and Mary Gordon, from NDOR Human Resources,  
12 apologizing for being summoned over to the office, as they  
13 were not following protocol, and I would be contacted later to  
14 go back to tend to the issue. Um, this is one of the example  
15 to rush to -- is one example of the rush to issue disciplinary  
16 action to me. I believe the mishandling this process continues  
17 with myself and other employees who are afraid to speak up  
18 against her -- mis -- Mr. Feast and his staff. Throughout the  
19 entire process, I've stated I felt I'm being singled out and  
20 targeted for disciplinary action, even when the meeting --  
21 even in the meeting where I issued, Mr. Santos stated himself,  
22 he didn't know why, quote unquote, "they," who I believe he  
23 was referring to, Mike Feast and his staff, had not, quote-  
24 unquote, "let it go," referring, uh, referring to the written  
25 reprimand, exhibit 1. I have in, uh, included the email,

1 exhibit 4, I sent to Mr. Santos regarding this meeting, and  
2 did not receive any sort of response to deny statements that  
3 were made in this meeting. The NDOT Human Resources and all  
4 parties involved have continuously stated that, quote-unquote,  
5 "all backing accidents result in a written reprimand to the  
6 employee, because of -- because all backing accidents are  
7 preventable." I'd like the counsel will note that section  
8 there. On District two Safety Committee notes, exhibit 2, from  
9 November 13th, 2019, meeting, there's an example that happened  
10 on 10/10/19, where a unit, 0841, a class 13 vehicle, um, was  
11 being backed under a sander rack, where the ladder's rack  
12 struck the sander rack. The same staff that deemed my accident  
13 preventable, uh, deemed this accident -- deemed this accident  
14 an incident, therefore, proving that the staff is inconsistent  
15 with all backing accidents being preventable. Backing  
16 accidents are preventables, uh, or preventables -- are  
17 preventable are the statement I received and confirmed with  
18 Exhibit A, the memorandum on discipline for da -- for backing  
19 accidents. Um, the list listed in the NDOT Safety Manual,  
20 Exhibit 6, it states five rules for backing on page 5. Vehicle  
21 that -- drivers are used -- to use a spotter and/or check  
22 their surroundings, including but not limited to side and top  
23 clearances when backing up before doing so. With that being  
24 stated, the driver of unit 0841 had a preventable accident,  
25 not an incident, according to the NDOT Safety Manual, in

1 Exhibit 6, and the prohibition of penalties, exhibit 7,  
2 section B4789, and Section F2. If these rules of policies are  
3 being applied and being used to administer disciplinary action  
4 to myself, why is not being used with other employees, as is -  
5 - incidents do not automatically constitute disciplinary  
6 action as preventable accidents do. This shows the  
7 inconsistency in the accident investigation process by  
8 district two maintenance staff. I personally have witnessed  
9 this, as there are other employees who have more than one  
10 backing accident, and is not reported as such, and they're not  
11 subject to disciplinary action. If the department is stating  
12 that this reprimand is part of progressive disciplinary  
13 action, the vehicle accident with Unit 0841 should have been  
14 deemed preventable, and disciplinary action should have been  
15 executed in the same manner as to begin or continue the  
16 progressive disciplinary action and process. The NDOR Human  
17 Resources state procedures were followed by the book, and  
18 references in internal investigation on August 20th, 2019,  
19 following the Notice of employee's Rights of internal  
20 investigation, which was given to me on August 14th, 2019. On  
21 this notice given to me, exhibit 5, it references NRS 284.387.  
22 If we reference this NRS particularly -- particularly section  
23 B, paragraph 2, that any det -- any determination made as a  
24 result of -- of such investigation must be the -- completed by  
25 the employer in the no -- completed and the employee notified

1 of any disciplinary action within 90 days after the employee  
2 is provided notice of allegations. If we continue down  
3 further, to paragraph three, it states to the -- that the --  
4 if the appointing authority does not make the determination  
5 within 90 days, that the employee is provided with the  
6 allegations, that the appointing authority shall not take any  
7 disciplinary action against the employee. Under NAC -- NAC  
8 284, written reprimands are located under the disciplinary  
9 procedures at NAC 284.638, and are the first item listed in  
10 the section, thus making written reprimand a disciplinary  
11 action and violates NRS 284.387, by being administered outside  
12 the 90 day window stated. NDOT's notification of conclusion of  
13 this investigation was a specificity of charges, which was  
14 later reversed and removed from my file. This makes the  
15 internal investigation incomplete. Therefore, if written  
16 reprimand, Exhibit 1, was issued to me on February 3<sup>rd</sup>, by Mr.  
17 Santos, incites the notice of internal investigation from  
18 August 14th, 2019, exhibit 5, in the internal investigation  
19 from August 20th, 2019, it does not fall within the timeline  
20 of 90 days, as stated in the NRS 284.387, as cited in the  
21 notice of employee's rights during an investigation, as the  
22 appointing authority did not file for an extension. By the  
23 appointing authority and human resources citing the  
24 investigation outside of the parameters of NAC 284.387, makes  
25 the written reprimand unjust and constitutes the -- an unjust

1 act towards myself and possibly any other employees that may  
2 encounter such instances in their career and working  
3 relationship with NDOT. In conclusion, I hope the EMC can see  
4 NDOT's injustice, an unprecedented of lackey (phonetic) regard  
5 for following policies and procedures set forth by themselves  
6 in the state of Nevada, including, but not limited to NNRS's  
7 and NAC. At the hearing, I plan to demonstrate and exemplify  
8 the lack of following procedures and demonstrated it in NDOT's  
9 exhibits, also. Uh, they continue to manipulate and change  
10 policies and procedures as they deem necessary, to fit them to  
11 abuse their power and retaliate against employees for  
12 following laws and protocols and speaking up about misconduct  
13 of staff. And speaking of, uh, misconduct of staff, as all  
14 involved in my case, by them doing this in human resources,  
15 failing to correct the actions of Mike Feast, unfortunately, I  
16 was forced to apply to leave the maintenance division, costing  
17 me my wages and having to take a demotion and pay cut in order  
18 to escape the harassment and hostile work environment created  
19 by Mike Feast and his staff. The position I ultimately ended  
20 up accepting has me traveling, often, up to 40 weeks a year,  
21 putting me away from home more than I -- putting me away, more  
22 than I am at home. Some may look at this written reprimand as  
23 a small thing, but for me as a career employee with NDOT, I  
24 want to fix these issues, so another employee is not subject  
25 to the same condition that Mike Feast has caused. I provided

1 audio -- audio evidence to the NDOT Human Resources, who has  
2 ignored and disregarded the fact that it states that targeting  
3 harassment by Mike Feast and his staff. I would like to  
4 provide this audio to the EMC, but EMC coordinator has stated  
5 there's no way to play the audio. The only way to prevent this  
6 injustice from happening for other employees and save NDOT  
7 from wasting time, money, resources, allowing -- by allowing  
8 and participating in Mike Feast and his staff targeting  
9 employees, as they would be for Mike Feast -- excuse me,  
10 refused to admit their wrongdoing. This entire process has  
11 cost all parties involved substantial amounts of both time and  
12 resources. The entire process could have been circumvented if  
13 NDOT and its parties involved would follow policies and  
14 procedures as written, instead of allowing the personal  
15 vendettas against staff to motivate them to pursue revenge  
16 through abuse of powers. I believe NDOT retracts and removes a  
17 writ -- I believe if NDOT retracts and removes a written  
18 reprimand from my record, as protocols were not followed, and  
19 I was treated unjustly, is a very reasonable request that  
20 could have saved a lot of time and resources. Throughout this  
21 entire process, I have shown and demonstrated the wrong and  
22 unjust actions against me by NDOT involved members, including  
23 Mike Feast, Brad Burge, Jason Peard, Dan Kerner, Craig Santos,  
24 Eden Lee, Mary Gordon, Alison Wall, (inaudible). I helped to  
25 further demonstrate this on September 9th at the EMC hearing,

1 which I have been granted. Thank you.

2 S. PARKER: Thank you.

3 SANTIAGO: (Inaudible).

4 S. PARKER: Okay.

5 SANTIAGO: Um, then I'm gonna reference some of the  
6 materials.

7 S. PARKER: Okay. So do you want to have that for your  
8 opening statement, or are you gonna --

9 SANTIAGO: Yeah, that's --

10 S. PARKER: -- to do that during your presentation?

11 SANTIAGO: That's pretty much my opening statement. We can  
12 go back and reference, um, if you reference exhibit -- you  
13 want that just as the opening exhibit, and we'll come back to  
14 the presentation?

15 S. PARKER: Because you get a presentation, too. But  
16 if you do it now, you're not gonna be able to pull (inaudible)  
17 --

18 SANTIAGO: That -- (inaudible) -- that'll be the opening  
19 statement.

20 S. PARKER: Okay.

21 SANTIAGO: Yes, ma'am.

22 S. PARKER: Thanks. Okay. So then, um, Counsel Parker,  
23 do you wanna, uh, provide (inaudible) statement?

24 C. PARKER: Yes. Thank you, Madam Chair. Deputy  
25 Attorney General Carrier Parker, for the record. Mr. Santiago

1 was stopped at a traffic light on 395. When the light turned  
2 green, he backed into the vehicle behind him instead of going  
3 forward. He caused almost \$10,000 in damage. This was the  
4 second, preventable back collision. And he received -- he has  
5 grieved his written reprimand and requested that he receive no  
6 discipline at all. I want to briefly discuss who has the  
7 burden to prevail on this grievance. Unlike the motion to  
8 dismiss, where the agency has the burden, now Mr. Santiago has  
9 the burden. He has the burden to demonstrate that his  
10 grievance should be granted, he should not be disciplined at  
11 all for the second backing collision -- collision. If there's  
12 a two-two tie vote on the grievance, Mr. Santiago loses and  
13 the written reprimand remains. In order for Mr. Santiago's  
14 grievance to be granted, he must show that one, he did not  
15 commit misconduct; two, he suffered an injustice, because NDOT  
16 violated statutes or regulations in disciplining him with a  
17 written reprimand. And he simply cannot do that. The facts are  
18 that this was Mr. Santiago's second discipline for a backing  
19 collision that caused damage. Mr. Santiago admitted that he  
20 was in reverse. When the light turned green, he let out the  
21 clutch thinking he was gonna go forward, and he reversed into  
22 a third party's vehicle. A written reprimand is within the  
23 disciplinary guidelines in the (inaudible). NDOT conducted an  
24 investigation. Mr. Santiago was interviewed. He admitted to  
25 causing the collision. NDOT initially chose, as I mentioned

1 before, to suspend Mr. Santiago one day, because this was his  
2 second, preventable backing collision. However, as noted, um,  
3 NDOT accidentally provided Mr. Santiago with charging  
4 documents that had not been signed. After this was brought to  
5 NDOT's attention, NDOT withdrew the suspension and issued a  
6 written reprimand. The substantial evidence establishes that  
7 Mr. Santiago engaged in misconduct. He admitted, he has not  
8 disputed that he committed misconduct. He was operating a  
9 state vehicle in an unsafe or negligent manner, resulting in  
10 damage to state equipment or other property. This is a second  
11 violation of NDOT prohibition and penalty F-2. Mr. Santiago's  
12 packet provides the NDOT prohibitions (inaudible), and they're  
13 also cited in the written reprimand, which is also an admitted  
14 exhibit to this proceeding. He -- he also committed the second  
15 violation of -8, because of his carelessness, which resulted  
16 in damage. He endangered himself and the public through his  
17 carelessness, and did not demonstrate a proper sense of  
18 responsibility for protection of state property. This is a  
19 violation of NDOT PNP B-7 and B-9, as well as NAC 284.650,  
20 subsection one, activity incompatible with conditions of  
21 employment. By backing into the vehicle behind him when he  
22 apparently attempted to go forward, but had the vehicle in the  
23 wrong gear, Mr. Santiago himself and the third party of the  
24 vehicle, were put in danger through his careless violation of  
25 a policy and safety rule. This is a violation of PNP B-4. If

1 he was going to back into the work zone, he should have had a  
2 spotter. And that is provided in the safety manual, which Mr.  
3 Santiago provided as an exhibit. This is also a violation of  
4 NAC 284.650, subsection 19, violation of a safety (inaudible).  
5 A written reprimand is the lowest possible discipline for this  
6 second violation. Mr. Santiago also provided a safety memo,  
7 which advises written reprimands for preventable backing  
8 collisions. Because the substantial evidence supports just  
9 cause for the written reprimand for Mr. Santiago's second,  
10 preventable backing collision causing damages, NDOT requests  
11 that EMC deny his grievance. In relation to his argument about  
12 NRS 284.387, which is a 90 day requirement after notice of  
13 investigation, that statute applies to suspensions, demotions,  
14 and dismissals. This is a written reprimand. That statute  
15 specifically says that it applies to discipline levy, pursuant  
16 to NRS 284.385. Again, that statute applies to suspensions,  
17 demotions, and dismissals. NDOT followed that timeline when it  
18 issued the original suspension. Mr. Santiago was notified  
19 within a couple weeks, by the notice of investigation, which  
20 he was provided, and it's in his own packet. He was provided  
21 that in August 2019. He had notice of the investigation. He  
22 was interviewed. He was issued a specificity of charges laying  
23 down what the vi -- violations, what the charges were. He had  
24 a pre-disciplinary review. He was issued a suspension. He  
25 appealed it. The procedural problem came to life, to NDOT.

1 They went through the suspension, gave him back his pay, gave  
2 him back the two hours of annual leave, because he works four  
3 10s, and issued the written reprimand. It was all timely. No  
4 statute was violated. Lastly, um, I know that Mr. Santiago has  
5 complained a lot about -- in his grievance about -- he says  
6 harassment, alleged discrimination, um, transferring, um, an  
7 alleged demotion, a letter of instruction. None of these are  
8 within the EMC's jurisdiction. His complaints about those  
9 actions are not timely. He -- they should not even be heard by  
10 this committee. This grievance is about a written reprimand  
11 that Mr. Santiago does not dispute the facts of. He committed  
12 violations, substantial evidence supports that, and that is  
13 why NDOT requests that the EMC deny his grievance. Thank you,  
14 Madam Chair.

15 S. PARKER: Thank you. Okay, Mr. Santiago?

16 SANTIAGO: Yes, ma'am.

17 S. PARKER: Okay. Unless anybody has questions, we can  
18 go into the presentation, but do you wanna go ahead and do  
19 your full presentation, then?

20 SANTIAGO: Uh, can we actually recess for a bathroom  
21 break, for about five minutes, by chance?

22 S. PARKER: Yes.

23 SANTIAGO: Okay.

24 DAVIES: Thank you.

25 S. PARKER: I'm sorry. And he was probably giving you

1 the eye.

2 DAVIES: I was gonna do that, yes. I appreciate that Mr.  
3 Santiago.

4 S. PARKER: Yeah, let's take a break for five minutes,  
5 please. You gotta be mindful of the witnesses. And (inaudible)  
6 five. Okay, we'll go ahead and reconvene. And so whoever, we  
7 left off, is a presentation by Mr. Santiago.

8 SANTIAGO: (Inaudible) chair.

9 S. PARKER: Thank you. I apologize for the wait.

10 SANTIAGO: No problem. Um, first I'd like to advise, or  
11 demonstrate to the committee, Exhibit 8 in my packet. Um,  
12 exhibit 8 is a transportation memorandum issued by Mr. Thor  
13 Dyson (phonetic), August 17th, 2009. Uh, previously in the  
14 material removed, the stated reference, this material, also.  
15 In an effort to provide consistent discipline throughout the  
16 district, it is my recommendation that all preventable  
17 accidents were written reprimand, at a minimum, particularly  
18 backing accidents. I believe this documentation was  
19 referenced, uh, in Ms. Parker's materials, as why I was wrote  
20 up. Um, my concern -- once again, I wanna reiterate to the --  
21 to the chair, or to the EMC, that I'm grieving the w -- not  
22 just -- not the rep -- written reprimands content, but how  
23 it's administered, the inconsistency. I believe that what this  
24 states right here, a written reprimand, at a minimum. Um, if  
25 we go and we reference exhibit 2, which is the safety

1 committee notes, safety committee meeting minutes, excuse me,  
2 we go down to the incident on 10/10. In the incident section  
3 it says, employee was backing up unit 0841, the sander, into  
4 the sander rack parking space. The sander ladder rack struck  
5 the inner cross support beam, causing ladder handle on the  
6 sander to bend inwards and towards the opposite handle. The  
7 inner cross support, approximately, is 11 inches shorter than  
8 the outside of the sander frame rack. After measuring unit  
9 0841, sander rack, and various other trucks with sanders, unit  
10 0841 was found to be approximately seven inches taller. In the  
11 NDOR's rep -- written reprimand to me, it states the policies  
12 and procedures. It also states, um, that all backing accidents  
13 should be deemed preventable. And that's inconsistent with  
14 this. And in this instance, again, that if this -- if this  
15 employee was backing up, why was this -- this acc -- or excuse  
16 me, as they were called an incident, I call it an accident,  
17 which should be deemed a preventable accident, according to  
18 their documentation that I exhibit in exhibit, uh, 9 or 8, 8  
19 or 9, uh, excuse me, it's Exhibit 8. Uh, that sets the  
20 precedent for what exactly is entailed with a -- with a --  
21 with a backing accident. And my fear is, like this -- this  
22 instance, whether it be my second or my first, this employee,  
23 this may be -- it is first. But how do we cont -- keep  
24 progressive disciplinary action consistent, if we pick and we  
25 choose that this -- this backing accident is not deemed an

1 accident, when this memorandum, in Exhibit 8, states,  
2 particularly that backing accidents are preventable, and a  
3 written reprimand, at a minimum? If we deem that that accident  
4 is just an incident and that employee is not reprimanded, why  
5 am I being held to the standard of following policies and  
6 procedures in a certain steps of disciplinary action, when  
7 this employee is not even, they're not even laying the  
8 groundwork for the progressive disciplinary action?

9 Progressive I understand, there's multiple steps. How do we  
10 start those steps if we don't start at step one, like anything  
11 else? This employee, they did -- they just say, oh, you know,  
12 I don't know, maybe they liked the guy or they played golf  
13 with him on the weekends. I'm not sure. But if we look at  
14 that, exhibit 2, it's stated as an incident. But if we look at  
15 Exhibit 8, it states that, particularly backing accidents, are  
16 -- should be deemed a written reprimand, at minimum -- all  
17 preventable accidents. So why is that accid -- that incident  
18 and that accident not as deemed -- deemed a preventable  
19 accident, when it clearly states that that's what it is? Once  
20 again, I want to iterate, that I'm not grieving that the  
21 content of the written reprimand. I'm de -- grieving how it's  
22 -- it's -- it's administered. The inconsistencies that  
23 District two has had -- that continues to exhibit, they --  
24 they just pick and choose who they want to discipline. Now, if  
25 I were to look at this safety meeting, it's -- mind you, this

1 is probably a month or two after mine. I don't have the exact  
2 dates right on me. But this is within a year of my incident.  
3 This is within a couple months, and it's deemed different than  
4 what mine was. Facts aside of my incident, we can look in  
5 here, and like I said, they, uh, exhibit 8 states that they  
6 all are to be deemed preventable. So if we -- we can't bend  
7 the rules for everybody. I mean, we -- it should be -- if I'm  
8 gonna be held to the -- NDOT's policies and procedures, they  
9 need -- I feel that other employees should be, too. That's the  
10 injustice that I'm grieving. Now, if I looked at this  
11 documentation and said -- and seen this and said, hey, yeah,  
12 that the -- whoever was back in 841, I don't know specifically  
13 -- yeah, he got a write up too, huh? Bummer on him. That would  
14 be a little bit easier to swallow than me getting the book  
15 thrown at me, initially, which I found, you know, to be  
16 incorrect in their documentation. Through this entire process,  
17 when -- even when I brought it before the, the, uh, the  
18 hearing officer, I stated that I was being singled out.  
19 There's an email that's actually on Exhibit 5, that after a  
20 meeting with Mr. Santos, I stated to him, you know, the  
21 contents of that meeting, it was never -- never, um, excuse  
22 me, never, um, what's the term I'm looking for? Excuse me  
23 (inaudible). Um, drawing a blank here. It was never, uh,  
24 contested that that was not what that meeting happened. I  
25 believe he was instructed not to respond to that meeting, just

1 so at the end -- so that he -- there was no other context in  
2 that manner. But it -- I replied to that meeting shortly  
3 after, I believe within an hour or two of -- after that  
4 meeting that occurred at my office, my supervisor, Raymond  
5 Dragu, advised me to take notes and write in an email, the  
6 contents of that meeting. I believe that they didn't respond  
7 to that, because that's incriminating evidence of them  
8 targeting. He knows exactly that that's -- he was instructed  
9 to administer that. It's not Mr. Santo's fault that he had to  
10 administer that. I understand that Mr. Burge and Mr. Peard  
11 instructed him to do that. I'm not -- there's nothing against  
12 him, but -- specifically, but if we're gonna start -- if we're  
13 -- if they're gonna claim that they -- they followed policies  
14 and procedures in accordance with their manuals, they, it  
15 needs to be across the board. We can't pick and choose to not  
16 -- to just write up this guy because we think this is what --  
17 he deserves it, you know, and then claim that we're following  
18 the laws. The laws are set there for -- for a reason, for a  
19 precedent. And not only that, but like I said, the -- that the  
20 timeline -- Ms. Parker stated that the timeline was -- was  
21 followed. It was not. if I was issued the notice of internal  
22 investigation, if we go back to that NRS, it states that it  
23 must be completed, I believe it's NRS 284.387, I have  
24 referenced. Any -- any act of disciplinary action must be  
25 executed within 90 days. And it was not. Another instance of

1 the harassment is when I'm just -- when I was called and told  
2 to be at the office. And I show up and the -- the write ups  
3 not even ready, because I believe they hadn't even sent it  
4 through HR yet. They hadn't even let human resources review  
5 it. Which is sad. That -- that's sad that they're in such a  
6 hurry to write somebody up that they're just gonna pencil-whip  
7 it on a document, sign it, and send it off before, um, Mary  
8 Gordon or Alison Wall or whoever's involved, reviews it. I --  
9 I mean, I've never been called in like that before and been  
10 told, no, you're fine, you're good. There's no other instance  
11 for me to be called over in that manner. And, you know, it was  
12 a waste of time. It reflected on my current chain of command.  
13 They -- they want to know why NDOT's maintenance division, Mr.  
14 Burge, Peard, and Santos keep calling me over there, when I'm  
15 supposed to be working for them. And it's all in this effort  
16 to issue this written reprimand. This could have been solved.  
17 They've had three steps to solve this issue. They could have  
18 said, you know what, if they got something against me or  
19 whatever, for whatever reason, they could have said, he's gone  
20 now. It is what it is. You know, they -- but they continue to  
21 push this issue. And they're not even in my chain of command.  
22 So if he's -- Mr. Feast is not my appointing authority at the  
23 time that this is issued. So I'm wondering where the  
24 jurisdiction is coming from, because it's not being issued to  
25 me by Charlie Pan (phonetic), who's my current acting

1 appointing authority, and was at the time of the issuance, or  
2 excuse me, Darren (inaudible). So I'm wondering what chain of  
3 command -- what warrants somebody else's chain of command to  
4 come over and write up an employee. Does that mean if Mr.  
5 Burge sees one of my fellow employees doing something wrong,  
6 that he's allowed to come over and give him a written  
7 reprimand that day? It's -- he's not in his chain of command.  
8 So once I've left, I believe that that's -- that should be  
9 disregarded, as they have no jurisdiction over me. They can't  
10 come in and say, hey, we're gonna give you this. I've already  
11 left. What's the difference of an employee that had left -- an  
12 employee that says, you know what, I'm -- I'm up. I'm out of  
13 here. I don't want to participate in these games of harassment  
14 and whatever. And they quit. They're -- terminate their state  
15 employment. Are we gonna go knock on their door and give them  
16 a written reprimand? Well, it happened when you were employed  
17 for us. Let's sign this paperwork and -- and make that -- make  
18 it official. I don't think that would happen. And I -- I would  
19 hope not. I think that's operating outside of their spectrum.  
20 Ms. Parker continues to, uh, portray this as I'm trying to get  
21 out of the writeup on the grounds of the content of the  
22 writeup. It's not that. It's -- it's the -- the manner in  
23 which it's distributed. This -- this is a common problem over  
24 in maintenance. I'm really surprised that we have not seen  
25 more of these people stand up. But I can tell you, from my

1 personal experience, when I've been issued some of these  
2 documents, I've been told, if I was a probational --  
3 probationary employee, I have no rights. Don't bother. You got  
4 10 days, done, you're not gonna win, blah, blah, blah. Other -  
5 - other instances, this. It wasn't until I stopped and I  
6 started reading some of these documents that are being handed  
7 to me, that I found the discrepancies. And I could go back  
8 years and find more. But this needs to stop now. This -- this  
9 is out -- this is completely outta line that these -- that  
10 we've let it get this far. I mean, it's pretty black and white  
11 that they -- Ms. Parker submitted the same exhibit about this  
12 memorandum, from Mr. Dyson in 2009, that all backing accidents  
13 are to be deemed preventable. How can we start the chain of  
14 command if they're not gonna start -- if they're not gonna  
15 deem the backing accident preventable by the other employee,  
16 or excuse me, the chain of -- or progressive disciplinary  
17 accident. Of we don't start at step one?

18 S. PARKER: So I -- I'm just gonna take liberty. This  
19 is Stephanie Parker for the record. I just wanted to ask the -  
20 - the question.

21 SANTIAGO: Yes, ma'am.

22 S. PARKER: Or two questions. I'm sorry. So, um, when  
23 did you move to the new department?

24 SANTIAGO: I believe it was October 5th or 6th of 2019.

25 S. PARKER: 2019.

1 SANTIAGO: I don't have the exact date. I'd have to  
2 reference my ESMT. It was early October of 2019. I believe it  
3 was a week or two prior to the initial, um, I forget the  
4 initial, uh, administration of the disciplinary action, I  
5 should say. Because I remember I was over there when they came  
6 over and gave me the days of without pay.

7 S. PARKER: Okay. And -- and my second question was, I  
8 see you mentioned in the writeup about a spotter. Were you  
9 provided with a spotter?

10 SANTIAGO: No, I was not, ma'am. I was in the -- in the  
11 traffic lane. I was not provided with a spotter.

12 S. PARKER: And --

13 SANTIAGO: I believe you're -- you're referencing the, uh,  
14 policies in page -- or the, uh, excuse me, the five --

15 S. PARKER: That's mention in the written --

16 SANTIAGO: Yes, the safety manu -- uh, exhibit 6, safety  
17 manual, page 25, rules for backing.

18 S. PARKER: Yeah. Well, it's referenced in the written  
19 reprimand, too.

20 SANTIAGO: Right.

21 S. PARKER: Yeah. Exactly. My second question is, um,  
22 do you know that there was no investigation on the other case  
23 that you mentioned from the safety (inaudible) --

24 SANTIAGO: I believe -- I believe they all are  
25 investigated.

1 S. PARKER: Oh.

2 SANTIAGO: But I mean, can then -- it's the supervisor's  
3 discretion to -- to deem that? And if the supervisor -- I  
4 don't have the, um, the -- the -- the, uh, documentation right  
5 in front of me. Um, but I believe that if the supervisor does  
6 deem that -- deem non-preventable, it must be accompanied by  
7 an appointed -- the letter could be appointing authority,  
8 because that violates that memorandum. It might be that  
9 memorandum. But yes, the -- all incidents in the DOT are sent  
10 before that safety committee -- incident, accidents, whatever  
11 -- there's an accident, uh, active investigation. That was  
12 included in Ms. Parker's demonstrations, but was -- had to --  
13 been removed.

14 S. PARKER: I'm sorry.

15 SANTIAGO: You're all right. Um, like I said, this is --  
16 the five rules for backing -- you just had a question about  
17 that -- and it states that, uh, part of that is in step one.  
18 It says get out and get the picture and check top clearances.  
19 The employee backed into a sander rack. Part of what I'm being  
20 wrote up for is this section, five rules for back up. Get out  
21 and check top clearances. The -- the, uh, safety committee  
22 makes the argument that the sander rack was 11 inches taller.  
23 It could be three feet taller, but it still states, get out  
24 and check all clearances -- on each side, the top, and the  
25 bottom, everything, which is why I'm so unclear on why that

1 accident was deemed, uh, an incident versus a preventable  
2 accident, because according to all their documentation, that  
3 should have been provided as preventable accident. That should  
4 have been deemed a preventable accident. And that's -- that's  
5 where I'm at with it.

6 S. PARKER: Yeah.

7 BAUER: Chair, this is Jennifer.

8 S. PARKER: Yes?

9 BAUER: May I ask a few questions (inaudible)?

10 S. PARKER: Absolutely.

11 BAUER: Thank you. Um, to dovetail on Chair Parker's  
12 question about the incident, um, quote-unquote in, um, the,  
13 what are they, the safety minutes Yeah.

14 SANTIAGO: Yeah, safety committee --

15 BAUER: Yeah, safety committee meeting minutes. Um, and  
16 I say "incident" quote-unquote, because that's the area that  
17 it's classified under.

18 SANTIAGO: Yes, ma'am.

19 BAUER: Um, do you know, for a fact, or do you have  
20 evidence, that that employee was disciplined?

21 SANTIAGO: No, ma'am.

22 BAUER: You -- you don't know. You don't have evidence?

23 SANTIAGO: That -- that's -- that's what I was -- that's  
24 what I'm grieving. Because that --

25 BAUER: You -- you don't know. So in fact, the employee

1 could have been disciplined?

2 SANTIAGO: They could have, but I don't believe so.

3 BAUER: Okay. Um, and then you had also, um, mentioned  
4 that this collision occurred in a traffic lane. And I see that  
5 it occurred on US 395. Did Highway Patrol respond?

6 SANTIAGO: Yes, ma'am.

7 BAUER: What was their finding?

8 SANTIAGO: There was fin -- their finding was actually  
9 that I was in the work zone. Um, and they -- I was not cited.

10 BAUER: You were not cited.

11 SANTIAGO: Not cited.

12 BAUER: And they found that you were in the work zone?

13 SANTIAGO: Yes, ma'am.

14 BAUER: Okay. And, um, one more question. The written  
15 reprimand indicates that you were previously disciplined for a  
16 collision?

17 SANTIAGO: Yes, ma'am.

18 BAUER: Is that correct? What were you issued?

19 SANTIAGO: Uh, I believe it's a written reprimand.

20 BAUER: Okay.

21 SANTIAGO: So that would be my first document, or backing  
22 accident, also. Another demonstration of my first one. I got a  
23 written reprimand, which is why another demonstrate -- another  
24 example of this is inconsistent, that even if this -- this  
25 employee backed into whatever, he was -- the sander rack, it

1 was not deemed a preventable accident. It was not ruled and  
2 not dealt with accordingly. If I'm dealt a written reprimand  
3 for my first one, shouldn't the person that backed into the  
4 sander rack be treated the same, because we're following  
5 policies and procedures?

6 BAUER: Thank you, Ms. Chair.

7 S. PARKER: Thank you. Uh, Chair recognizes Co-chair  
8 Davies.

9 DAVIES: Uh, thank you, ma'am. I just, uh, Mr. Santiago,  
10 I -- I, there have been questions thrown at you and, um, I --  
11 I just -- I have bits and flops of (inaudible) have been  
12 floating in my head from the various piles of information  
13 we've had, and some of it may have been discarded. And, uh, is  
14 your -- did you reference your first, uh, writeup anywhere  
15 here? Your first --

16 SANTIAGO: I did not. I did not. No, sir.

17 DAVIES: Okay. Would you mind if I asked you a question,  
18 uh, question of -- some questions about it, with what I  
19 believe is in my head versus what's in paper?

20 SANTIAGO: Uh, I would rather not, because that exhibit  
21 has been removed.

22 DAVIES: Okay. Um, all right. Without asking specific  
23 questions, then, was it deemed a preventable accident?

24 SANTIAGO: Was -- which -- which instance?

25 DAVIES: The first one, sir.

1 SANTIAGO: Yes, sir.

2 DAVIES: It was deemed a preventable. Okay. So both your  
3 backing up accidents were deemed preventable?

4 SANTIAGO: Yes, sir.

5 DAVIES: All right. Um, what, um, so the -- this -- this  
6 -- this incident that led to -- to this -- I mean, and you've  
7 got one piece of paper here that says preventable accident,  
8 and this is your incident. And then, uh, 14, 15 days later, we  
9 have another incident, which was, uh, we have another  
10 accident, which is deemed an incident. Uh --

11 SANTIAGO: Yes, sir.

12 DAVIES: -- you're -- you're saying that both of them  
13 were preventable, because both of them sh -- you should have,  
14 uh, what is it on the, uh, back of the postal vans? GOAL, get  
15 out and look?

16 SANTIAGO: Yes, sir.

17 DAVIES: You're saying that they're the same?

18 SANTIAGO: Yes, sir.

19 DAVIES: You don't feel, uh, I -- I'm jumping to an  
20 assumption here, but, uh, one happened in a yard somewhere and  
21 the other happened on a public highway?

22 SANTIAGO: Yes, sir.

23 DAVIES: But doesn't make a difference?

24 SANTIAGO: No, sir.

25 DAVIES: If a yard -- if an accident like this happens

1 in a yard, uh, who -- obviously, I'm trying to draw facts  
2 together. Your accident happened on public highway, so it  
3 being a state vehicle, the capital police or NHP or somebody  
4 is required to respond.

5 SANTIAGO: Yes.

6 DAVIES: In this case it was Highway Patrol, right?

7 SANTIAGO: Yes, sir.

8 DAVIES: Uh, if an accident happens on the yard, who  
9 responds?

10 SANTIAGO: Uh, safety and training and the chain of  
11 command for that individual.

12 DAVIES: Uh, I'm sorry. I need more knowledge. Who's  
13 safety and training?

14 SANTIAGO: Uh, it depends on each district. A lot of it'll  
15 be the equipment operator instructor. And I believe the  
16 position above that is, uh, training officer II. And then the  
17 other one.

18 DAVIES: Oh, okay.

19 SANTIAGO: And then it'll be --

20 DAVIES: So it's an actual per -- it's an actual person,  
21 not a committee -- over -- it is actually somebody who's  
22 charged with that duty?

23 SANTIAGO: Yes, sir.

24 DAVIES: Okay.

25 SANTIAGO: So it should be the supervisor, all the way up

1 through the -- if you -- if you reference the, um -- oh, it's  
2 -- it was actually in the -- in the employer packet. There's a  
3 chain of command that's filed, or a chain of custody on that  
4 form, but it's been removed.

5 DAVIES: Okay. All right. So in an accident  
6 investigation, you're saying there's a chain of -- of persons  
7 who are charged with responding?

8 SANTIAGO: Yes, sir.

9 DAVIES: Okay. And they would form an investigation  
10 similar to that, which NHP does?

11 SANTIAGO: Yes, sir.

12 DAVIES: All right. Uh, I think that's my questions for  
13 now. Thank you, Madam Chair.

14 S. PARKER: Thank you. Any other questions right now,  
15 before we move to cross? Okay. Next, we're gonna move to  
16 cross-examination. So counsel, uh, Parker, you'll be able to  
17 cross, uh, Mr. Santiago.

18 C. PARKER: Thank you, Madam Chair. Deputy Attorney  
19 General Carrie Parker for the record. Um, Mr. Santiago, um,  
20 for the record, could you please tell us, um, what your  
21 current title is?

22 SANTIAGO: Engineering Technician II, crew 028.

23 C. PARKER: And how long have you worked with  
24 Department of Transportation?

25 SANTIAGO: What was that? I heard, how long have I worked

1 with what now?

2 S. PARKER: At -- in -- at Department of  
3 Transportation.

4 SANTIAGO: Oh, over a decade, uh, 10 years plus. I believe  
5 closer to 13.

6 C. PARKER: Mr. Santiago, I might not loud enough for  
7 you?

8 SANTIAGO: You're fine. I can hear you now.

9 C. PARKER: Okay. Um, what was your title and position  
10 in July of 2019?

11 SANTIAGO: July of 2019? Uh, Highway Maintenance, uh,  
12 Worker III.

13 C. PARKER: And so I'm gonna ask you some questions  
14 about the day of the collision, July 31st, 2019. Okay?

15 SANTIAGO: Yes, ma'am.

16 c. parker: Were you part of a crew?

17 SANTIAGO: Yes, ma'am.

18 C. PARKER: And for the project that day, was part of  
19 the road blocked off and part was available to public  
20 motorists?

21 SANTIAGO: Yes, ma'am.

22 C. PARKER: So the work zone was marked in such a way  
23 as to allow motorists to get into the turn lane, from 395 onto  
24 Mica, correct?

25 SANTIAGO: Yes. Yes.

1 C. PARKER: And the collision occurred in the area  
2 that was available to the public motorist?

3 SANTIAGO: Yes.

4 C. PARKER: So you were in a travel lane, correct?

5 SANTIAGO: Yes, ma'am.

6 C. PARKER: But your -- your vehicle was in reverse,  
7 is that correct?

8 SANTIAGO: Yes, ma'am.

9 C. PARKER: Did you have a spotter behind you or  
10 anywhere to help you with reverse?

11 SANTIAGO: No, ma'am.

12 C. PARKER: So you pulled past the work zone --

13 SANTIAGO: No, ma'am.

14 C. PARKER: -- in -- in -- into the turn lane on 395,  
15 is that correct?

16 SANTIAGO: No, ma'am. I pulled past the area -- the area  
17 of work. The work zone, protruded past that inters -- inters -  
18 - or the intersection. A work zone and a work area are  
19 different.

20 C. PARKER: So you -- you were in the (inaudible) lane  
21 --

22 SANTIAGO: The work zone.

23 C. PARKER: -- that was open to the public, correct?

24 SANTIAGO: Yes, ma'am.

25 C. PARKER: But you put your car -- your truck in

1 reverse?

2 SANTIAGO: Yes, ma'am.

3 C. PARKER: And you were stopped in front of a traffic  
4 light.

5 SANTIAGO: I would like to object to this, as -- as the  
6 relevance, as I'm not grieving what the content of the -- the  
7 written reprimand is. I'm grieving of how it was handled. Uh,  
8 which she stated earlier, was the NDOT's representation stated  
9 they were -- that the EMC has no jurisdiction over the actual  
10 reprimand.

11 C. PARKER: Madam Chair, the Department of  
12 Transportation would stipulate, if Mr. Santiago was willing to  
13 stipulate, that he was in the traffic lane, he was in reverse,  
14 he let out the clutch, he thought he was going forward and he  
15 backed into the car behind him, and he did not have a spotter.  
16 If he will so stipulate, so will the department.

17 SANTIAGO: I'm not sure what she's asking.

18 S. PARKER: She's just asking you to confirm that you  
19 were -- say this again, Counsel Parker. It was kind of long,  
20 but I -- I know what you're saying. She's just asking you to  
21 stipulate pretty much what's in the written reprimand is that  
22 you were in the, uh, the public traffic lane, in a work zone.

23 SANTIAGO: Okay. Yes, Ms. Parker?

24 S. PARKER: And you were in reverse. Go ahead. You --  
25 you re-phrase it your way, please, Ms. coun -- or Counsel

1 Parker.

2 C. PARKER: Thank you, Madam Chair. Carrie Parker, for  
3 the record.

4 DAVIES: Madam Chair, this is Gwyn.

5 C. PARKER: Mr. Santiago was in the traffic lane, in  
6 an NDOT vehicle. He was in reverse. There was a car behind  
7 him. (Inaudible) --

8 DAVIES: Madam Chair, this is Gwyn.

9 C. PARKER: -- he let out the clutch thinking he was  
10 going forward, but it was in reverse. So he went backwards, he  
11 hid the car behind him, and he did not have a spotter. Will  
12 Mr. Santiago agree to those facts?

13 SANTIAGO: Oh, yes.

14 S. PARKER: Okay.

15 SANTIAGO: Madam Chair, this is Gwyn.

16 S. PARKER: (Inaudible) for a minute. Uh, hold on a  
17 second, um, Co-chair Davies?

18 DAVIES: We had an objection. Was that ruled on? Because  
19 I -- I hear testimony carrying on, and I'm wondering whether I  
20 have to take any weight to this testimony, because I didn't  
21 hear an objection, or a ruling on the objection.

22 S. PARKER: Well, counsel restated her question.

23 DAVIES: Oh.

24 S. PARKER: Do you still object to her restating?

25 SANTIAGO: I do. What the -- the, what the context is of

1 it, because they're stating, like they stated earlier, it's --  
2 or that -- that the EMC has no jurisdiction over the content  
3 of the -- the written reprimand. They're not contesting that.  
4 The -- that -- are they -- that's why I was wondering, because  
5 actually, they're stating here -- they're, so. Sure. Yeah,  
6 we'll go with it.

7 S. PARKER: Yeah, that's why we're here today.

8 SANTIAGO: Right?

9 S. PARKER: That's why you're here right now. So --  
10 because you get -- go ahead. I'm sorry for the interruption.

11 C. PARKER: Madam Chair, may I proceed?

12 S. PARKER: Yes, please.

13 C. PARKER: Carrie Parker for the record. Mr.  
14 Santiago, on the day of the, uh, collision, did you talk with  
15 Nevada Highway Patrol about the incident?

16 SANTIAGO: I did, yes.

17 C. PARKER: Did Nevada Highway Patrol tell you whether  
18 they considered you to be at fault?

19 SANTIAGO: They did not tell me that day.

20 c. parker: Um --

21 SANTIAGO: They told me I was not cited. That was the  
22 extent of what they said.

23 C. PARKER: I'm sorry, I missed that.

24 SANTIAGO: They told me I was not cited. That's what they  
25 said, instead.

1 C. PARKER: Okay. So you were not cited, but you were  
2 not, um, told whether they deemed you to be at fault?

3 SANTIAGO: Not that day, no, ma'am.

4 C. PARKER: Did -- have they at any time -- notified  
5 you that you were at fault?

6 SANTIAGO: I have not received any communication from NHP  
7 stating that I was at fault.

8 C. PARKER: Has anyone else informed you that NHP  
9 determined that you were at fault?

10 SANTIAGO: Uh, and believe in this writeup, they stated  
11 that -- they stated that. Is it in their writeup? I don't  
12 think that -- I don't recall. Or was that part of the -- was  
13 that part of the --

14 C. PARKER: (Inaudible) what you know, Mr. Santiago.

15 SANTIAGO: Right. I don't recall.

16 C. PARKER: Um, so you, uh, referenced exhibit 2 in  
17 your packet?

18 SANTIAGO: Yes, ma'am.

19 C. PARKER: Which is the safety committee meeting  
20 minutes. I'd like to ask you some questions about that. Are  
21 you ready?

22 SANTIAGO: Yes.

23 C. PARKER: So, an incident is considered different  
24 than a preventable accident, is that correct?

25 SANTIAGO: Yes, ma'am. They're separated on this document.

1 C. PARKER: That's (inaudible). And your collision was  
2 deemed a preventable accident, correct?

3 SANTIAGO: Yes, ma'am.

4 C. PARKER: And the incident that you're referring to  
5 in the safety committee minutes, you have no personal  
6 knowledge as to whether that employee was disciplined or not?

7 SANTIAGO: Uh, the employee was not disciplined. Uh, I  
8 don't believe they're disciplined for incidents. I spoke with  
9 the -- I spoke with the employee, and I was asked not to bring  
10 up his name, as he was afraid of retaliation.

11 C. PARKER: I'm sorry, I missed that.

12 SANTIAGO: Yes, I was -- I spoke with the employee that  
13 was involved in this instance, and he asked me to omit his  
14 name, due to fear of retaliation.

15 C. PARKER: Okay. Well, I believe that Co-chair, um,  
16 David's already asked you about this, um, but I was having  
17 some trouble listening -- hearing it, so please forgive me if  
18 I repeat. Um, the incident involved in the safety committee  
19 meeting minutes occurred on the NDOT yard, is that correct?

20 SANTIAGO: Um, yes, ma'am.

21 C. PARKER: Were you present when that occurred?

22 SANTIAGO: No, ma'am.

23 C. PARKER: And your incident occurred in public  
24 traffic, on US 395, correct?

25 SANTIAGO: Yes, ma'am.

1 C. PARKER: And the incident in the safety committee  
2 minutes did not involve damage to a third party's vehicle, is  
3 that correct?

4 SANTIAGO: No, ma'am.

5 C. PARKER: And your incident did involve damage to a  
6 third party's vehicle, correct?

7 SANTIAGO: Yes, ma'am.

8 C. PARKER: Are you aware that whether the operator of  
9 Unit 841 had had any previous backing collisions?

10 SANTIAGO: Uh, yes.

11 C. PARKER: And are you aware whether that person has  
12 been disciplined for those?

13 SANTIAGO: They have not.

14 C. PARKER: Are you aware of the factual circumstances  
15 around those collisions?

16 SANTIAGO: Uh, just per the individual.

17 C. PARKER: So personally, you have no knowledge of  
18 those collisions?

19 SANTIAGO: I have personal knowledge of them, as -- as  
20 what they responded -- or what they conversed to me.

21 C. PARKER: Okay. So you -- you heard from someone  
22 else, then?

23 SANTIAGO: Yes, ma'am.

24 C. PARKER: So regarding the memorandum that you  
25 provide in Exhibit 8 -- do you -- do you see that?

1 SANTIAGO: Yes, ma'am.

2 C. PARKER: This memo is about preventable accidents,  
3 correct?

4 SANTIAGO: Yes, ma'am.

5 C. PARKER: This memo does not address collisions that  
6 are considered incidents, is that correct?

7 SANTIAGO: No, ma'am.

8 C. PARKER: Uh, that -- that's incorrect, or you  
9 agree?

10 SANTIAGO: No, I said no, ma'am. It does not address that.

11 C. PARKER: Okay. So is it your contention that,  
12 because you transferred to a different unit, to a different  
13 crew, nothing that happened on your previous crew can be  
14 subject to discipline?

15 SANTIAGO: What is -- what was the word she used? I didn't  
16 hear the very first part of it. What was that? Can you restate  
17 that?

18 S. PARKER: It was (inaudible) --

19 C. PARKER: Yes. So is it your contention, your  
20 position, that if you transferred to a different crew, nothing  
21 that happened on your previous crew can be subject to  
22 discipline?

23 SANTIAGO: Uh, that would be circumstantial, depending on  
24 what type of disciplinary action you're talking about, what  
25 the context -- what were disciplinary -- or what were

1 disciplined. So do I understand correctly that your position  
2 is, because you had this collision while you were on a  
3 different crew and you transferred to a new crew, the  
4 Department of Transportation, which is still your employer,  
5 cannot discipline you for the collision on the previous crew?

6 SANTIAGO: Not via, uh, not via somebody who's not my  
7 immediate supervisor. In this document you just referenced, it  
8 states that it's the supervisor's immediate discretion, the  
9 immediate supervisor. I think something went wrong.

10 S. PARKER: Uh, we lost her. Hold on a second,  
11 everybody. We lost, um, Counsel Parker and, um, Member Scott.

12 C. PARKER: Madam Chair?

13 S. PARKER: Yes, you can go ahead and proceed. I'm  
14 sorry.

15 C. PARKER: This is, um, Deputy Attorney Carrie  
16 Parker, for the record. I don't have any further questions for  
17 Mr. Santiago.

18 S. PARKER: If there's any questions, let me know,  
19 from members. If not, I'm gonna go ahead and move to  
20 presentation by Counsel Parker.

21 SANTIAGO: I don't think she hears --

22 S. PARKER: Oh. Uh, can you hear me, Counsel Parker?

23 C. PARKER: Um, yes.

24 S. PARKER: Okay. So we --

25 C. PARKER: I -- I -- (inaudible). Go ahead.

1 S. PARKER: Oh, I was just gonna say that we're gonna  
2 go ahead and proceed with your presentation, followed by the  
3 employee cross res -- cross, uh, examination.

4 C. PARKER: Thank you, Madam Chair. Um, if it pleases  
5 the committee, I have three witnesses. Um, they are currently  
6 assigned to traffic controls related to the Caldor fire. So as  
7 I complete with each witness, um, if it pleases the committee,  
8 and they've had their opportunity, I would ask that they can  
9 be excused.

10 S. PARKER: Absolutely. And so in light of that, if  
11 any committee members has any questions, please be cognizant  
12 that these witnesses will be excused as soon as we, um, as  
13 soon as they're done testifying. So if you have any questions,  
14 you need to ask immediately. So go ahead. I'm sorry.

15 C. PARKER: Thank you, Madam Chair. First I would like  
16 to call, Jason Peard.

17 UNIDENTIFIED: (Inaudible) please sign in. DAG Parker,  
18 can you see Mr. Peard?

19 C. PARKER: Yes, I can. Thank you. Good morning, Mr.  
20 Peard.

21 PEARD: Hello.

22 C. PARKER: Could you please state and spell your name  
23 for the record?

24 PEARD: My name is Jason Peard, P-E-A-R-D.

25 C. PARKER: What is your current title at the

1 Department of Transportation?

2 PEARD: I'm a Highway Maintenance Supervisor II.

3 C. PARKER: And how long have you held that position?

4 PEARD: Since April of '17.

5 C. PARKER: So if you look in the, um -- Madam Chair,  
6 does Mr. Peard have a copy of the exhibits?

7 S. PARKER: Yes.

8 C. PARKER: Okay, thank you. If you could please look  
9 at what is Exhibit 9? I'm sorry. Um, well, we're gonna hold  
10 off on that. I'm sorry, Mr. Peard. Um, what was your position  
11 on July 31st, 2019 -- same position you have now?

12 PEARD: Yes. I am a Supervisor II in Carson City.

13 C. PARKER: Okay. So, um, were you aware of the  
14 collision that Mr. Santiago was involved in?

15 PEARD: Yes, I was.

16 C. PARKER: Um, did you go to the collision site?

17 PEARD: Yes, I did.

18 C. PARKER: Um, could you please describe for the  
19 committee what you saw?

20 PEARD: Uh, upon arriving, there was a full traffic  
21 control set up for doing shoulder work in the median, uh,  
22 southbound 395 at Mica. Uh, the left turn pocket to go  
23 eastbound onto Mica was open. That's where Mr. Santiago's, uh,  
24 10 yard dump truck was and the car that he had backed into.

25 C. PARKER: Is there anything else you'd like to say

1 about the accident?

2 PEARD: The -- the only things that stand out in my  
3 mind is that Barron was outside of the cones and so was the  
4 car.

5 C. PARKER: Okay. So they were in the travel area for  
6 (inaudible) --

7 PEARD: They were in a -- yes. Yes, ma'am. They were in  
8 an open travel.

9 C. PARKER: Okay. Did you come to a conclusion after  
10 viewing the accident scene, who was at fault?

11 PEARD: Uh, I believed Mr. Santiago was at fault.

12 C. PARKER: And how did you arrive at that conclusion?

13 PEARD: Uh, there was -- there -- there was traffic  
14 control set up with, uh, traffic cones. Uh, Barron could have  
15 pulled inside of the traffic cones to get inside of the work  
16 zone. He did not. He pulled into the turn pocket and tried to  
17 back -- back into the traffic.

18 C. PARKER: Okay. And did you see the level of damage  
19 to the third party's vehicle?

20 PEARD: I did.

21 C. PARKER: And how would you describe that damage?

22 PEARD: Uh, it was -- the vehicle was heavily damaged.

23 C. PARKER: Based upon your experience as a  
24 supervisor, in your knowledge of this incident, do you think  
25 that Mr. Santiago should have received a written reprimand?

1           PEARDE:     I do.

2           C. PARKER:     Why?

3           PEARDE:     Uh, as he stated about Fordyce's, uh, memo  
4 about backing accidents are deemed preventable. Also, this was  
5 his second --

6           C. PARKER:     I'm sorry?

7           PEARDE:     -- This was also his second in a short amount  
8 of time.

9           C. PARKER:     Okay. Um, Madam Chair, uh, I turn Mr.  
10 Peard over for any questions from anyone else?

11          S. PARKER:     Okay. Members have any questions for Mr.  
12 Peard?

13          DAVIES:     Nothing from Gwyn.

14          S. PARKER:     Oh, sorry. Uh, before you - we do that,  
15 I'm gonna put you -- cross examine (inaudible).

16          SANTIAGO:     Good afternoon, Mr. Peard. Um, as you -- as Ms.  
17 Parker just asked you in reference to that memorandum by, uh,  
18 Mr. Thor Dyson, you said that all backing accidents report --  
19 or should be deemed preventable.

20          PEARDE:     That is correct.

21          SANTIAGO:     Okay. That is correct.

22          PEARDE:     Subject to investigation, yes.

23          SANTIAGO:     Well, but all of them are to be deemed  
24 preventable. That's my question.

25          PEARDE:     Subject to investigation.

1 SANTIAGO: But per that ma -- per that memorandum --

2 PEARD: Yes.

3 SANTIAGO: -- do you think that it says all or --

4 PEARD: Yes. Correct.

5 SANTIAGO: Okay. So are you supervisor over that truck,

6 0841?

7 PEARD: I am.

8 SANTIAGO: Okay. Were you there for that investigation?

9 PEARD: I was.

10 SANTIAGO: Okay. Was that vehicle backed into a object?

11 PEARD: Yes, I was.

12 SANTIAGO: Okay. So was that vehicle -- was that incident  
13 deemed preventable?

14 PEARD: It was. And there's a reason for that.

15 SANTIAGO: It was deemed preventable?

16 PEARD: No. That was (inaudible) --

17 SANTIAGO: (Inaudible) record show. There's some  
18 discrepancy here. So was it deemed --

19 PEARD: That was --

20 SANTIAGO: -- preventable or not?

21 PEARD: -- that was an incident.

22 SANTIAGO: So it was not deemed preventable? But it --

23 PEARD: It was a non-preventable.

24 SANTIAGO: It was unpreventable?

25 PEARD: It was an incident. It wasn't the driver's

1 fault, Barron. You know that.

2 SANTIAGO: So who was -- whose fault was it?

3 PEARD: So that was a brand new unit.

4 C. PARKER: Uh, Madame Chair, uh, Madam Chair, I'm  
5 going to object to going into the personal information about  
6 the driver of this other incident. This is about Mr.  
7 Santiago's discipline, not the other. And I would also object  
8 that, uh, Mr. Santiago is badgering Mr. Peard, um, not even  
9 allowing him time to answer the questions.

10 S. PARKER: So --

11 SANTIAGO: I would say that we're -- we're -- we're  
12 talking about two backing accidents. I believe they're  
13 similar. It's the -- the -- the context is listed in my  
14 exhibit. I believe, in this (phonetic) cross examining, asking  
15 was the accident deemed a preventable?

16 S. PARKER: Yep. And, and I'm gonna agree with that,  
17 but I think you need to allow Mr. Peard --

18 SANTIAGO: Okay. (Inaudible).

19 S. PARKER: -- a chance to -- to answer. And I think  
20 he (inaudible) your question, actually. So, um, thank you  
21 Counsel Parker. Um, if you can, um, you know, go ahead and  
22 continue questioning, but keep in mind that, you know, you're  
23 questioning the testimony that he's --

24 SANTIAGO: Roger that.

25 S. PARKER: Okay.

1 SANTIAGO: Uh, would you let --

2 S. PARKER: Yeah.

3 SANTIAGO: -- that I just know that? Your (inaudible) --  
4 your deal on that -- your -- your decision on that objection?  
5 I don't think they heard you. No.

6 S. PARKER: Okay. So I'm -- I'm gonna allow Mr.  
7 Santiago to continue questioning, keeping in mind that he's  
8 questioning based on, uh, the testimony that Mr. Peard gave,  
9 as well as, um, and to allow him time to answer and, uh, to  
10 answer the question. So --

11 SANTIAGO: You ready?

12 S. PARKER: Yeah.

13 SANTIAGO: Okay. So in that he -- in, uh, that incident,  
14 of 0, I think it was 0481, that -- that accident was deemed an  
15 incident, right, not a preventable.

16 PEARD: That is correct. Would you like me to finish  
17 the answer I started previously?

18 SANTIAGO: Sure, I'd love to.

19 PEARD: Okay. So that truck was a brand new unit. We  
20 had just received it. It had just been built. That truck was  
21 built outside of spec. The ladder handles were built too tall.  
22 Per spec, those trucks are built to be able to back into the  
23 sander rack with one operator. That truck was built outside of  
24 spec, and that's why that truck hit the sander rack when it  
25 was backed in.

1 SANTIAGO: Was that -- so we're -- we weren't aware of  
2 that?

3 PEARD: We were not aware of that.

4 SANTIAGO: But we did sign off on receiving that truck  
5 from the vendor, as it meant specs?

6 PEARD: I did not.

7 SANTIAGO: But NDOT, as an entity did.

8 PEARD: I am not equipment division. I did not accept  
9 equipment.

10 SANTIAGO: Okay. So inside the, um, excuse me. Let me  
11 reference this right here. This is the, uh, exhibit 6, in  
12 mine. I -- do you -- think you got -- I think you have a copy  
13 over there. This safety manual, page 25, rules for backing.  
14 Does this -- does this manual apply to all employees?

15 PEARD: Yes, it does.

16 SANTIAGO: Yes it does. So what, uh, right there on the,  
17 uh, five rules for backing your vehicle, in section one, could  
18 you read me that -- the first and second paragraph, please?

19 PEARD: You said section one, paragraph one and two.

20 SANTIAGO: Yes, sir.

21 PEARD: Don't just glance around, get out and walk  
22 around. Get out and walk clear around the vehicle. Check the  
23 ground you are to back around. (Inaudible) for persons, fixed  
24 objects, presence of any pedestrians, checked out clearances,  
25 uh, note any unusual overhead obstructions, such as utility

1 wires, fire escapes, signs, canopies, et cetera.

2 SANTIAGO: Would you say a sander rack is a canopy?

3 PEARD: Say a sander rack is a sander rack.

4 SANTIAGO: Okay. So do you believe that, in that instance  
5 of 048, or excuse me, 0841, if the operator of that vehicle  
6 were to use the -- use this manual, and use the five rules for  
7 backing, that accident could have been prevented?

8 PEARD: Uh, I think if he got out and walked around, he  
9 would've said, there's a sander rack that I've parked a  
10 thousand sanders in, and they're built to fit in there. And I  
11 can see the sander, and it has handles on it for a ladder,  
12 just like every other sander does. And he would've gone off  
13 the assumption that it was gonna fit right in there, because  
14 that's what they do. (Inaudible).

15 SANTIAGO: So -- so you're -- so you spoke with the driver  
16 about that?

17 PEARD: Yeah, I spoke with the driver and I spoke to  
18 safety and training about it.

19 SANTIAGO: Right. Did the driver say he got -- he had got  
20 out?

21 PEARD: The driver did not say he got out.

22 SANTIAGO: Do you know if the driver got out?

23 PEARD: I do not.

24 SANTIAGO: Okay. So, in all reality, the -- the driver  
25 wasn't following some of the five rules of backing, right?

1 PEARD: I cannot assume that. I know that --

2 C. PARKER: (Inaudible) --

3 PEARD: -- he did back the truck --

4 C. PARKER: Objection. Miss --

5 S. PARKER: (Inaudible) --

6 C. PARKER: -- (inaudible) testimony. I would ask that  
7 Mr. Santiago ask questions and wait for the answer, and not  
8 put words in the witness's mouth.

9 S. PARKER: Yeah, we're gonna have to allow the  
10 witness to (inaudible) --

11 SANTIAGO: Is -- okay. Am I ready to go again? Okay. So do  
12 you believe that the driver of 0841 followed the five backing  
13 rules for backing, according to and NDOR's policies, or excuse  
14 me, the safety manual?

15 PEARD: I -- what I know for sure, is that the sander  
16 made contact with the sander graft when he backed it in there.  
17 I do not know if he got out, because I didn't conduct the  
18 investigation. That would've been safety and training.

19 SANTIAGO: Okay. So you were not there when that accident  
20 happened? Or you weren't --

21 PEARD: I was not there when it happened. I talked to  
22 him afterwards.

23 SANTIAGO: So you -- so you weren't a witness, like you  
24 were to mine? To my --

25 PEARD: I was not a witness to yours, either. I was not

1 there when your accident happened.

2 SANTIAGO: Did you observe the incident, as per your guys'  
3 documentation, in person, after it happened?

4 PEARD: I saw it afterwards.

5 SANTIAGO: Afterwards. So you didn't do any investigation,  
6 you just looked at it and said, there it was?

7 PEARD: I looked at it. I let safety and training do  
8 their investigation.

9 SANTIAGO: Okay.

10 PEARD: I'm not an investigator, I'm a supervisor.

11 SANTIAGO: Did safety and training do an investigation  
12 into mine?

13 PEARD: I'm sure they did.

14 SANTIAGO: And what was deemed of that? What was it  
15 deemed?

16 PEARD: It was deemed a backing accident.

17 SANTIAGO: So was the other accident -- that -- was the  
18 other driver backing when he struck the sander rack?

19 PEARD: Yes, he was.

20 SANTIAGO: So that would be a backing accident, Right?

21 PEARD: By definition?

22 SANTIAGO: By definition. (Inaudible). I have no further  
23 questions.

24 S. PARKER: Thank you. Okay. Any committee members  
25 have any questions of Mr. Peard? Uh, Co-chair Davies?

1           DAVIES:    Uh, thank you for your testimony, sir. I -- I -  
2 - I have one question. Um, after the incident -- I believe the  
3 date was 10/19. Let me just make sure of that. Sorry about  
4 this. Yes. After the in, oh, sorry, 10/10/19. After the  
5 incident of 10/10/19, with Unit 0841, and the sander rack,  
6 were any modifications or any other actions done to prevent a  
7 recurrence of that accident to either 0841 or the sander rack?

8           PEARDE:    Yes. So all of the new sanders that we had were  
9 modified, and the spec was, uh, I don't know what the  
10 equipment division did with the spec, but they made sure that  
11 sanders, from then on, would be inside of that spec, to fit  
12 inside of those sander racks. I believe there were two new  
13 sanders in both -- that one being one of them -- the other one  
14 -- were both modified so that that would not happen again.

15           DAVIES:    Uh, and what was -- what were that  
16 modification? Just --

17           PEARDE:    Uh --

18           DAVIES:    -- just the layman's answer, if you would,  
19 because --

20           PEARDE:    The handles on the Sander racks were shortened.

21           DAVIES:    All right. Thank you. Appreciate that.

22           S. PARKER:       Member Scott --

23           DAVIES:    No further questions, Ms. Chair.

24           S. PARKER:       Oh, go ahead. Is that your last question,  
25 Co-Chair Davies?

1           DAVIES:    Yeah, I was saying no further questions, from  
2 me. Thank you, ma'am.

3           S. PARKER:       Thank you. And Member Scott, I can't see  
4 you right now, but did you have any questions of Mr. Peard?

5           SCOTT:     I don't have any questions.

6           S. PARKER:       Okay. Member Bauer, any questions before  
7 we release Mr. Peard? I do have one question (inaudible).

8           BAUER:     Yes, Ms. Chair. Thank you. Jennifer Bauer, for  
9 the record. Um, Mr. Peard, have you issued discipline for  
10 other preventable backing accidents, as a supervisor at NDOT?

11          PEARDE:     I have.

12          BAUER:     You have. And, um, what was that discipline  
13 like? Were they written reprimands or were they more than  
14 that? Were they high (inaudible)?

15          PEARDE:     Uh, in the last several months, I've done a  
16 couple of supervisors for, uh, backing accidents. And those  
17 were written reprimands. They were minor damage for backing  
18 accidents, but there were still backing, unless they got  
19 reprimands.

20          BAUER:     Thank you. I'm sorry.

21          S. PARKER:       That's all right. Um, okay. And I just --  
22 I had what -- I had, um, one question. You mentioned that, um,  
23 you believe Mr. Santiago, it was his fault. Are you also an  
24 accident investigator, the accident scene investigator?

25          PEARDE:     Am I a --

1 S. PARKER: Yes.

2 PEARD: (Inaudible).

3 S. PARKER: I -- I'm asking you, because you also said  
4 that you don't typically investigate, that there's another  
5 party. Yeah.

6 PEARD: So, at the time, I was one of Mr. Santiago's  
7 supervisors. I was his supervisor's supervisor. When one of my  
8 employees gets into an accident, if I'm available, I always  
9 try to come up -- come on scene. That's what we do. That's  
10 what we're supposed to do. Not that I'll necessarily  
11 investigate it. I'm there to make sure that the operator is  
12 okay, the other employees are okay, the public is okay, that  
13 it can be prevented in the future, damage to our equipment.  
14 Those are the things that I'm there for.

15 S. PARKER: Okay. Okay. One follow up question is  
16 also, so in the other incident that's in the safety memo, that  
17 -- the 10/19 one, um, a lot of accidents -- there -- there are  
18 actual opportunities for us identify how to prevent, like you  
19 said. Right? So were -- are there preventable actions that  
20 were taken after that incident? So, as far as the receiving of  
21 equipment, because I think he explained that it was due to,  
22 um, out of code, or out of spec --

23 PEARD: It's out of spec.

24 S. PARKER: -- equipment. So there were steps that  
25 were taken afterwards --

1 PEARD: So --

2 S. PARKER: -- so that we ensure that --

3 PEARD: Again, I'm -- I'm not the equipment division.

4 Equipment division --

5 S. PARKER: Right.

6 PEARD: -- accepts all equipment for the DOT, for the  
7 State of Nevada, everywhere.

8 S. PARKER: Right.

9 PEARD: So I am not equipment division. But what I do  
10 know, is that equipment division went into their specs to make  
11 sure that this would not happen again.

12 S. PARKER: Okay.

13 PEARD: And they modified the two sanders that we had  
14 that were outside the spec.

15 S. PARKER: Okay. So that was the way to prevent.

16 Okay. I just wanted to clarify that. Thank you. Any other  
17 questions of Mr. Peard before we can let him go?

18 C. PARKER: Madam Chair?

19 S. PARKER: Yes?

20 C. PARKER: Um, if I may redirect?

21 S. PARKER: Absolutely.

22 C. PARKER: Mr. Peard, is there -- um, Carrie Parker  
23 for the record -- Mr. Peard, is there a difference between an  
24 incident and an accident?

25 PEARD: There -- an incident could be several -- an

1 incident could be dropping a shovel up against your truck and  
2 putting a dent in it.

3 C. PARKER: So what's the significance of determining  
4 that the 841 incident was an incident, lack of another word,  
5 and the collision that Mr. Santiago was involved with, was a  
6 pre preventable accident?

7 PEARD: So Mr. -- Mr. Santiago was in an open travel  
8 lane with traffic behind him and backed into a vehicle. The  
9 guy that backed the sander into the sander rack was told,  
10 here's a brand new sander. We know it fits in that sander  
11 rack. Go hang it up so we can do some work on a truck. And he  
12 went to do that.

13 C. PARKER: So according to your, uh, years of  
14 experience as a supervisor at the Department of  
15 Transportation, um, is it reasonable to, uh, to deliver a  
16 written reprimand for this type of collision, that Mr.  
17 Santiago was involved in?

18 PEARD: Yes, ma'am.

19 C. PARKER: No further questions, Madam Chair.

20 S. PARKER: Thank you. Okay, Mr. Peard. Thank you for  
21 your time. Appreciate it. Um, and we know that you have to go,  
22 and so we excuse you, unless you have anything (inaudible).  
23 Thank you.

24 C. PARKER: Thank you, Mr. Peard.

25 PEARD: Thank you.

1 C. PARKER: Madam Chair, if I may call my next  
2 witness?

3 S. PARKER: Yes, please.

4 C. PARKER: I'd like to call Brad Burge.

5 S. PARKER: Thank you.

6 C. PARKER: Good afternoon, Mr. Burge. Thank you for  
7 coming. Could you please spell and state your name, for the  
8 record?

9 BURGE: Brad Burge, B-U-R-G-E.

10 C. PARKER: What is your current position at the  
11 Department of Transportation?

12 BURGE: Highway Maintenance Manager.

13 C. PARKER: How long have you had this position?

14 BURGE: Um, total nine and a half years. I've been in  
15 Reno, with this position, since the winter of '16, so I'd say  
16 somewhere around November.

17 C. PARKER: Okay. So -- so you had this position, um,  
18 when this incident occurred in July of 2019, correct?

19 BURGE: Correct.

20 C. PARKER: So were -- how long were you Mr.  
21 Santiago's supervisor?

22 BURGE: Um, let's -- I don't remember. He -- he held  
23 another position, um, for district 2, which was -- he was part  
24 of the, uh, safety and training. Uh, so he would not have been  
25 under my supervision at that point. I don't remember the

1 timeline of that. So when he came back --

2 C. PARKER: Okay.

3 BURGE: -- to maintenance after that, he would've been  
4 in my chain of command.

5 C. PARKER: Are you familiar with the 2018 written  
6 reprimand that Mr. Santiago received?

7 BURGE: Yes, ma'am.

8 C. PARKER: And what can you tell us about that?

9 BURGE: Um, all -- all -- all I know is it was a  
10 backing accident. It was inside of a work zone, outside of a  
11 work area. Work zone includes, from beginning sign to end of  
12 sign. Work area is a area that you're physically working in.

13 C. PARKER: Okay. Are you referring to the incident,  
14 um, we're talking about today or the one from a couple years  
15 ago, 2018?

16 BURGE: Oh, I don't remember any -- about -- anything  
17 about '18. I was talking about the one --

18 C. PARKER: Okay. Okay. Um, were you aware whether Mr.  
19 Santiago had a previous written reprimand?

20 BURGE: I don't recall.

21 C. PARKER: Okay. So if we look at exhibit number 9 in  
22 the packet in front of you -- for the record, this is a copy  
23 of the grievance. Mr. Burge, if you flip back -- oh, it looks  
24 like maybe it's not included. Did you respond to this  
25 grievance?

1 BURGE: Yes, ma'am.

2 C. PARKER: Um, do you remember what your response  
3 was?

4 BURGE: I got a copy of it. If I can pull it out of my  
5 documentation?

6 C. PARKER: Madam Chair, would that be permitted? It  
7 seems to have been omitted from, um, Mr. Santiago's packet. Is  
8 it okay for Mr. Burge to refer to his own copy?

9 BURGE: She shook her head, yes.

10 S. PARKER: So -- so yes --

11 UNIDENTIFIED: Your Honor it's the same -- the copy  
12 that's in my -- my packet.

13 SANTIAGO: I think it was because it was attached as a  
14 PDF. I don't think it printed out the log of the --

15 S. PARKER: Oh, okay.

16 SANTIAGO: I believe they had an issue with it. I couldn't  
17 get it (inaudible) the other day (phonetic).

18 S. PARKER: Okay. Go ahead. Can we -- oh, is that what  
19 this is back here?

20 BURGE: This should be the memorandum dated March 6th,  
21 2020.

22 S. PARKER: I know it was admitted, because  
23 (inaudible) content (phonetic).

24 BURGE: You want me to read it?

25 S. PARKER: Yes, please.

1 BURGE: Okay. Due to scheduling conflicts, we were  
2 unable to agree on a reasonable time for us to meet, in order  
3 for me to (inaudible) a better understanding of the grievance.  
4 However, I read your grievance, your proposed (inaudible), and  
5 Craig Santos' response. I fully believe that the written  
6 reprimand is consistent, fair, and reasonable for the  
7 violations' due policy you had -- you had during the incident  
8 July 31st, 2019, a backing accident. You were originally given  
9 progressive discipline, consisting of one day leave  
10 (inaudible) a pay. I understand that this progressive  
11 discipline was withdrawn, as management recognized there was a  
12 procedural mishap. I do not believe there will be any  
13 additional procedural complications, and the State has  
14 followed the policy procedures. I do not see any (inaudible)  
15 or abuse of power by management staff, as you have stated. If  
16 you not agree with your proposed resolution, removing this  
17 written reprimand from your file.

18 C. PARKER: Thank you, Mr. Burge. Is this your  
19 response to the grievance?

20 BURGE: Yes, ma'am.

21 C. PARKER: Do you have anything that you would like  
22 to change about it?

23 BURGE: No, ma'am.

24 C. PARKER: Based upon your experience as a  
25 supervisor, and your knowledge of this incident, do you think

1 that Mr. Santiago should have received a written reprimand?

2 BURGE: No. I think he should have received days off,  
3 to be consistent --

4 C. PARKER: Do you -- and why is that?

5 BURGE: Because that's, uh, that would be consistent  
6 with everything else I've been involved in.

7 C. PARKER: So it's your opinion, based on your  
8 experience as supervisor, that Mr. Santiago should have  
9 received a suspension?

10 BURGE: Yes.

11 C. PARKER: Madam Chair, I have no further questions  
12 for Mr. Burge. I would open him up to other committee members  
13 or Mr. Santiago for question.

14 S. PARKER: Thank you. First we'll go to, uh, cross by  
15 Mr. Santiago.

16 SANTIAGO: Uh, good afternoon. Mr. Burge. Um, in this  
17 reference to this -- this, uh, are you -- first off, are you  
18 the -- are you Jason Peard's immediate supervisor?

19 BURGE: Yes, I am.

20 SANTIAGO: You are? Okay. So what -- so when you see a  
21 wrongdoing, uh, by an employee, what -- what's your first  
22 course of action, in progressive discipline?

23 BURGE: (Inaudible).

24 SANTIAGO: Well, what is that?

25 BURGE: I don't understand the question.

1 SANTIAGO: What -- what would be the first step in  
2 correcting an employee's misconduct?

3 BURGE: You gotta identify the issue first.

4 SANTIAGO: Okay. So let's say you -- I -- per -- or, we  
5 will speculate, as per Ms. Parker says, that you identify an  
6 issue, uh, or of wrongdoing. What is the -- for the first in -  
7 - what is the first action you, yourself take to resolve this  
8 issue, and reprimand -- or excuse me -- correct the  
9 (inaudible)?

10 BURGE: I let safety and training do their  
11 investigation on the incident.

12 SANTIAGO: Well, I'm not talking about sa -- I'm just  
13 talking, in general, as a supervisor --

14 BURGE: You're asking me. That's what I'm telling you  
15 that I do.

16 SANTIAGO: Okay. So let's say -- so you -- you were part  
17 of this investigation -- right? -- and you deemed it that I,  
18 um, was willful -- willfully negligence in damaging state  
19 equipment?

20 BURGE: Uh, yes I did.

21 SANTIAGO: You -- you were, you were part of that. So  
22 willfully means I did that on purpose, correct? Is that what  
23 willfully means?

24 BURGE: Did you put the truck in reverse?

25 SANTIAGO: Uh, yes I did.

1 BURGE: So that was a willful action.

2 SANTIAGO: Right. So that's besides the fact. I'm asking  
3 the question of what willful means. Does willful mean --

4 BURGE: I just --

5 SANTIAGO: -- I did that --

6 BURGE: -- (inaudible) --

7 S. PARKER: Well, wait a minute.

8 C. PARKER: Objection.

9 S. PARKER: Excuse me. I'm sorry. So, um, if he asks  
10 you a question, just answer the -- answer with just a simple  
11 response, not rephrasing --

12 BURGE: Okay.

13 S. PARKER: -- and things like that. This is not to be  
14 confrontational.

15 BURGE: Okay.

16 S. PARKER: This is for us to be able to gather the  
17 facts. So -- and he is -- he has the opportunity to actually  
18 ask these kinda questions.

19 SANTIAGO: Uh, well she --

20 C. PARKER: (Inaudible) --

21 SANTIAGO: -- she objected, so I (inaudible) --

22 C. PARKER: -- question. I object to asking Mr. Burge  
23 legal questions.

24 S. PARKER: What -- what legal question.

25 C. PARKER: Meaning of willfulness.

1 SANTIAGO: I believe it pertains to -- because it's  
2 included in -- the definition -- he has to -- he has to use  
3 his discretion using that word of willfulness in the write up.

4 S. PARKER: So were you asking --

5 SANTIAGO: So if he's --

6 S. PARKER: -- for his legal definition --

7 SANTIAGO: I'm asking what he --

8 S. PARKER: -- or were you asking for his definition?

9 SANTIAGO: Yes, both. I'd actually like both. On the  
10 documentation, what does willful represent? And then, in your  
11 personal perspective, what does willful represent?

12 C. PARKER: Okay.

13 BURGE: Willful is an intentional action.

14 SANTIAGO: An intentional action.

15 S. PARKER: He doesn't have to answer.

16 SANTIAGO: So --

17 S. PARKER: So you don't have to answer lawful. You're  
18 not in attorney. So just, to say that. If you wanna ask him  
19 what his -- he's in the -- he's in the capacity as a witness,  
20 not in attorney.

21 SANTIAGO: Right.

22 S. PARKER: Just wanna clarify.

23 SANTIAGO: So have you witnessed any willful destruction  
24 of state property, otherwise? Outside of this incident, excuse  
25 me, let me (inaudible) repeat that question.

1 BURGE: What do you mean?

2 SANTIAGO: Have you ridden anybody else up for willful  
3 destruction, damaging (inaudible) to a vehicle?

4 BURGE: There's been other occasions of, uh,  
5 preventable accidents, if that your question.

6 SANTIAGO: That wasn't my question. My question was, did -  
7 - have you wroten (phonetic) anybody up or reprimanded anybody  
8 for willful destruction?

9 BURGE: I don't know how to answer that question.

10 S. PARKER: (Inaudible).

11 SANTIAGO: It's a yes or no question.

12 BURGE: It really isn't.

13 SANTIAGO: I believe it is. I --

14 S. PARKER: So I -- I'm gonna -- and -- and, uh, you  
15 know, Counsel Par -- Parker, if you can instruct the witness  
16 to actually -- um, do you have an objection to the -- him  
17 answering this question? Because I don't see any validity of -  
18 - of why he would not answer, either yes or no, or not to his  
19 recollection. I'm jus --, I'm pursuing -- I -- I'm proceeding  
20 this as confrontation.

21 C. PARKER: Madam Chair, this is Carrie Parker. I -- I  
22 was unable to hear what the question is. I would ask if Mr.  
23 Santiago could please repeat it?

24 S. PARKER: Okay.

25 SANTIAGO: Um, has Mr. Burge wrote up or administered

1 discipline for willful destruction of state property, other  
2 than this instance? Did she hear that?

3 C. PARKER: So the question is whether he's ever  
4 disciplined anyone for violation of prohibition and penalty B-  
5 8?

6 SANTIAGO: Yes.

7 C. PARKER: Uh, Mr. Burge, that'd be fine, if you  
8 wanna answer that.

9 BURGE: By definition, I would say yes.

10 SANTIAGO: Okay. So would you say that, if I were to have  
11 some sort of sticker or something that represents something  
12 I'm a part of, outside of state, and I place that on a  
13 vehicle, would that be willful destruction?

14 C. PARKER: Your Honor, uh, Your Honor, I'm gonna  
15 object to this speculation. This is far removed from the  
16 grievance at issue. And this is a tangent that is not  
17 relevant. I would ask that the question not be --

18 SANTIAGO: It pertains to my right up concern --  
19 containing that I was willfully destructive.

20 S. PARKER: Okay. Can you (inaudible) --

21 SANTIAGO: And it is stated in the grievance. This is what  
22 I'm going at -- going toward, working towards. That's willful  
23 destruction of property, is the defacing a state truck with  
24 stickers and whatnot.

25 S. PARKER: Yeah, I -- I don't see a problem with him

1 -- if this -- this was actually -- if this was something that  
2 was contested during the grievance process, in steps one  
3 through three, I don't see that it was. But if you want to --

4 SANTIAGO: It was (inaudible) --

5 S. PARKER: -- show him the --

6 SANTIAGO: Were you aware of that sticker?

7 BURGE: I knew about that sticker, yes.

8 SANTIAGO: Okay. Were you --

9 C. PARKER: Uh, I'm sorry. Uh, Carrier Parker, for the  
10 record. What was the ruling on the objection?

11 S. PARKER: It was, I asked him to clarify. So --

12 C. PARKER: Okay.

13 S. PARKER: -- I, uh, what the relevance was.

14 C. PARKER: Thank you.

15 SANTIAGO: Would you qualify that as willful destruction  
16 of state property?

17 C. PARKER: How is that rel -- um, Madam Chair? I have  
18 the same objection.

19 SANTIAGO: It's in the context of the grievance,  
20 throughout the entire process --

21 S. PARKER: Stop.

22 SANTIAGO: -- steps one through three.

23 S. PARKER: Yeah. So I -- I'm -- I'm actually gonna  
24 overrule that and allow the questioning.

25 BURGE: No, I don't believe it's destruction of

1 property.

2 SANTIAGO: So -- okay, so placing a sticker on a vehicle  
3 that has nothing to do with -- with the NDOT -- NDOT, is not  
4 willful destruction of property or defacing state property?

5 BURGE: In my opinion, no.

6 SANTIAGO: No. So if I go get a sticker that says  
7 whatever, a vendor, a brand, and I put it on the side of a  
8 truck, you're not gonna write me up?

9 C. PARKER: Objection.

10 S. PARKER: So he's --

11 C. PARKER: Objection.

12 S. PARKER: -- (inaudible) --

13 C. PARKER: (Inaudible) unrelated to the grievance. It  
14 calls for speculation. It's asking hypotheticals. I -- I have  
15 the same objection.

16 S. PARKER: Yeah, I -- and I -- I'm actually going to  
17 sustain. I think this has been answered. I think he's answered  
18 this, as well.

19 SANTIAGO: Okay. So there was no disciplinary action for  
20 the willful destruction of that state vehicle, or -- of the  
21 willful destruction of that unit, 20 -- 1257?

22 BURGE: Can I answer that?

23 C. PARKER: (Inaudible) --

24 UNIDENTIFIED: Are you referring to the picture, again?

25 C. PARKER: -- I didn't hear the complete question. If

1 Mr. Santiago could repeat it, please?

2 SANTIAGO: Yes. Was there any disciplinary action in --  
3 was -- that resulted of this sticker being placed on Unit  
4 1257, the willful placement in destruction of this vehicle?

5 C. PARKER: Uh, I would object, because Mr. Santiago  
6 knows who that employee is. And that will be disclosure of  
7 confidential, personnel information, Madam Chair.

8 SANTIAGO: I've never stated anyone's personal  
9 information.

10 S. PARKER: I -- yeah, I -- I'm gonna overrule that.  
11 And -- and because that -- yeah, he has not, uh, provided any  
12 names or any identifying information. And it -- it's really  
13 either a yes or no.

14 BURGE: No, he was asked to remove the sticker.

15 SANTIAGO: Okay. So there's no disciplinary action,  
16 whatsoever, resulting from the willful destruction that --

17 BURGE: I already said yes.

18 SANTIAGO: Were you a part of the -- the incident of the  
19 backing accident of 0841, the investigation on that one, under  
20 the sand rack we referred to earlier?

21 BURGE: What do you mean, was I part of the incident?

22 SANTIAGO: Were you part of the investigation of the  
23 incident of 0841, referenced in section 2?

24 BURGE: Yes.

25 SANTIAGO: (Inaudible)?

1 BURGE: Yes.

2 SANTIAGO: You were. In your opinion, was that a -- a  
3 preventable accident?

4 BURGE: No.

5 SANTIAGO: That was not a preventable accident?

6 BURGE: No.

7 SANTIAGO: Okay. Was the operator of that vehicle backing  
8 when that, quote-unquote, "incident" as the -- as the  
9 committee puts it --

10 BURGE: Yes.

11 SANTIAGO: -- when it happened? So they were backing?

12 BURGE: Yes.

13 SANTIAGO: So if you turn to section, uh, I believe it's  
14 8, in this exhibit. It should be the memorandum by Thor Dyson,  
15 on August 17th, 2009. Could you please read paragraph one and  
16 two of that?

17 BURGE: Sure. In order to provide consistent discipline  
18 throughout the district, it's my recommendation that all  
19 preventable accidents warrant a written reprimand, at a  
20 minimum, particularly backing accidents. Higher levels of  
21 discipline may be required, based on particular circumstances  
22 or previous disciplinary history. It has been the opinion of  
23 the district safety committee that each accident should be  
24 evaluated individually, and that the employee's supervisor  
25 should initiate any discipline -- any disciplinary actions.

1 Preventable accidents includes backing accidents, accidents  
2 where the employee received a citation from a law enforcement  
3 officer, or any accident that results from the intentional or  
4 flavored (phonetic), uh, careless action of -- on the part of  
5 the -- of an employee. If the accident is deemed preventable  
6 and the employee's immediate supervisor decides no  
7 disciplinary action is warranted, and they rate the  
8 justification to the district engineer may be required.

9 SANTIAGO: Are you aware if there was a written, uh,  
10 justification submitted to the district engineer in this  
11 instance?

12 BURGE: I believe there was.

13 SANTIAGO: There was? Uh, could you continue farther and  
14 read that third paragraph, again -- or excuse me.

15 BURGE: Just the third paragraph? With this memo in  
16 mind, preventable accidents could warrant a written reprimand  
17 and the severity of the disciplinary action should conform to  
18 the guidelines, as set forth in the employee's guide to  
19 prohibition and penalties. Disciplinary action for operating  
20 state equipment in a unsafe manner, resulting in damage to  
21 state equipment or other property, including the following.

22 SANTIAGO: Was there damage to the state property when  
23 that vehicle was backed in that santer -- sander rack?

24 BURGE: Yes.

25 SANTIAGO: There was. Okay. So do you believe that that --

1 that damage falls under this memorandum?

2 BURGE: No.

3 SANTIAGO: How so?

4 BURGE: So this is a guideline. And it states in here,  
5 just soon as I can find it, if an accident is devi -- deemed  
6 preventable, and the employee's supervisor decides no  
7 disciplinary action, this was not deemed preventable.

8 SANTIAGO: Okay. Well, why was it not deemed preventable?

9 BURGE: (Inaudible) --

10 SANTIAGO: Because it states preventable accidents include  
11 backing accidents.

12 BURGE: Because it was a -- deemed a specification. It  
13 was not correct on a new piece of equipment.

14 SANTIAGO: Who was it deemed by?

15 BURGE: It was deemed by the, uh, committee, when  
16 there's a discrepancy in accident.

17 SANTIAGO: Are you aware that that committee is not to  
18 reflect any sort of disciplinary action -- on any disciplinary  
19 action by -- to any employees? That's part of your opening  
20 statement in that committee, correct, the safety committee?

21 BURGE: I'm (inaudible) safety (inaudible) committee.

22 SANTIAGO: You're not part of that?

23 BURGE: I am part of that. (Inaudible) --

24 SANTIAGO: So you -- did you attend that meeting on that  
25 day?

1 BURGE: Sure did.

2 SNATIAGO: So they open it up and they say, you know, this  
3 -- this will not reflect any disciplinary action?

4 BURGE: But the committee I'm talking about was not  
5 that committee.

6 SANTIAGO: What committee is -- are you talking about?

7 BURGE: It's secondary to that committee.

8 SANTIAGO: So what committee is that?

9 BURGE: There's an investigation committee, when  
10 there's a discrepancy on an accident.

11 SANTIAGO: An investigat -- and who does that consist of?

12 BURGE: Myself, equipment division, whether it be --

13 SANTIAGO: When was that committee formed, and when does  
14 that committee meet?

15 BURGE: When there's a discrepancy. So when --

16 SANTIAGO: So we --

17 BURGE: -- when it can't be determined whether it's an  
18 accident or an incident, they meet, we discuss the  
19 circumstances, and we come up with a decision.

20 SANTIAGO: So what deemed -- so I'm not following, because  
21 I've never heard of this committee. I've -- I've never -- what  
22 -- what do you call that committee?

23 BURGE: I don't remember what it's called.

24 SANTIAGO: I don't believe that committee exists. Do you  
25 have meetings, notes of that committee?

1 BURGE: If, uh, if I had the manual, I could show you  
2 that it exists, but I don't have the manual.

3 SANTIAGO: Which manual do you need?

4 BURGE: It -- where -- where it talks about the safety  
5 committee.

6 SANTIAGO: So we're talking about the safety committee.  
7 We're not talking about this other committee that you're  
8 talking about.

9 BURGE: This is part of the safety committee.

10 SANTIAGO: Right. So the opening statement of the safety  
11 committee meeting states that anything found in those meetings  
12 are not to reflect in disciplinary action against employees,  
13 correct?

14 BURGE: Yes, sir.

15 SANTIAGO: So when you deem -- when you take that and you  
16 deem whether an accident is preventable or non-preventable,  
17 that reflects on the disciplinary action against an employee,  
18 does it not?

19 BURGE: No. Not -- not at all.

20 SANTIAGO: How -- how so not?

21 BURGE: It determines whether it's an incident or  
22 accident, crash --

23 SANTIAGO: So if they deem it an accident, so --

24 BURGE: -- preventable, un-preventable.

25 SANTIAGO: So if you deem -- if you do deem it a

1 preventable accident, is there disciplinary accident against  
2 an employee or no? Or do we just -- we go, we -- we redo the -  
3 - we go to the other committee and see if that's -- if we  
4 could just change something to fix it?

5 BURGE: Which question do you want me to answer, sir?

6 S. PARKER: Yeah, (inaudible) --

7 SANTIAGO: I want you to ask -- which committee are you  
8 referring to is the secondary committee?

9 BURGE: Like I said, I don't remember the specifics of  
10 it, but it's in the specifications, under safety committee,  
11 that if there's a discrepancy, this group of people get  
12 together, discuss it, look at things, determine whether it's  
13 preventable, incident, non-preventable.

14 SANTIAGO: So when does that committee meet? It's just  
15 whenever they deem it's necessary?

16 C. PARKER: Madam Chair?

17 S. PARKER: So what's -- yeah?

18 C. PARKER: Deputy (inaudible) --

19 S. PARKER: Go ahead, DAG --

20 SANTIAGO: This -- I've never heard of this committee.

21 C. PARKER: -- (inaudible) --

22 SANTIAGO: I've worked for 13 years, and I --

23 C. PARKER: -- (inaudible) --

24 SANTIAGO: -- I was --

25 C. PARKER: -- about the safety committee, and how it

1 works. I don't see how it is related to Mr. Santiago's --

2 SANTIAGO: Madam Chair, (inaudible) --

3 C. PARKER: -- grievance, how it bears upon the  
4 grievance.

5 UNIDENTIFIED: (Inaudible).

6 C. PARKER: It was not something that he argued in his  
7 packet. And we were veering off what is relevant here.

8 S. PARKER: Right. Let's -- let's move on to what is  
9 actually included in the packet. I -- I'm gonna actually  
10 sustain that. Let's move on to what's in the packet. He's  
11 answered the question about the safety committee's major  
12 points, though.

13 SANTIAGO: Did you, uh, did you review this written write  
14 up that was given to me, written reprimand, excuse me, before  
15 it was administered to me?

16 BURGE: I don't recall.

17 SANTIAGO: So you're unaware if you've ever looked at this  
18 document, or --

19 BURGE: I'm sure I've seen it. I do not remember.

20 SANTIAGO: You don't remember if you reviewed it at all?

21 S. PARKER: He -- he -- I'm gonna interject here,  
22 because he's answered. Once he's answered the question, please  
23 move on.

24 SANTIAGO: Okay.

25 S. PARKER: If he says no recollection, that's an

1 answer.

2 SANTIAGO: Okay. So your signature's nowhere on here?

3 BURGE: Like I said, I don't recall.

4 SANTIAGO: Okay. Thank you. No further --

5 S. PARKER: Thank you. Um, any questions for, uh, Mr.  
6 Burge before we let him go, from the committee members? He's  
7 actually -- he's got places to go to. He's responding, as  
8 well, so.

9 C. PARKER: Ma -- Madam Chair, if I could redirect?  
10 (Inaudible) --

11 S. PARKER: Oh, I'm sorry. I'm so --

12 C. PARKER: -- just one question.

13 S. PARKER: Okay. Absolutely.

14 C. PARKER: Mr. Burge, thank you so much for your  
15 time, sir. I wanted to ask you what the difference is between  
16 an incident and a preventable accident.

17 BURGE: So an incident would be something that could  
18 possibly be out of the control of the employee. So on the  
19 incident that has been discussed, the reason it was deemed an  
20 incident is because the specification was not in compliance.  
21 That specification was rewritten. Our sander drivers back into  
22 these during the wintertime, throughout the year, and they  
23 never have a spotter, and they never expected anything to get  
24 hit. Mr. Barron Santiago was one of these operators that has  
25 backed into these sander racks multiple times, without

1 incident.

2 C. PARKER: Thank you. I have no further questions.

3 S. PARKER: Thanks. Any member questions? Yes, Co-  
4 chair Davies?

5 DAVIES: Uh, you -- you, uh, Madam Chair, uh, I need a  
6 moment to think. Sorry, I withdraw (inaudible) my question.

7 S. PARKER: No worries. Member Scott, I can't see you  
8 if you have your hand raised, but let me pipe up if you had  
9 any questions.

10 SANTIAGO: She does have her hand raised.

11 S. PARKER: She does?

12 SANTIAGO: Yes, ma'am.

13 S. PARKER: I'm sorry. Go ahead, Member Scott. I'm  
14 sorry, I can't see you. I see your back.

15 SCOTT: Can you hear me? This is Member Scott.

16 S. PARKER: Yes, now I do.

17 SCOTT: Can they hear me?

18 SANTIAGO: Yes.

19 S. PARKER: Yes, you can go forward.

20 SCOTT: I have one -- I have one question for, um,  
21 witness Burge. Is that your name?

22 BURGE: Burge?

23 SCOTT: Burge. Sorry. Forgive me for that. I just  
24 wanted to clarify -- you said the equipment in the incident  
25 that we were speaking about, of Unit 0841, that was the new

1 equipment, is that correct?

2 BURGE: Yes, ma'am.

3 SCOTT: Because it was found to be approximately seven  
4 inches taller than the other equipment, and that's why that  
5 incident was found to be non-preventable. Is that correct?

6 BURGE: That's -- yeah, that's why that incident was  
7 deemed an incident.

8 SCOTT: Okay. And -- okay. That -- that's why. That --

9 BURGE: Okay.

10 SCOTT: -- that's the question that I had. I wanted to  
11 make sure that's why that was considered an incident, not an  
12 accident.

13 BURGE: Yes.

14 SCOTT: Okay. Thank you.

15 S. PARKER: I don't have any other questions. Co-Chair  
16 Davies, just wanted to reach back out to you to, and --

17 DAVIES: Thank you, Madam Chair. I'm -- I'm trying to  
18 formulate a question, and -- and the question keeps, uh,  
19 walking away from Mr. Burge and towards Mr. Santiago. But I'm  
20 going to ask the question carefully, of Mr. Burge.

21 S. PARKER: Okay.

22 DAVIES: Mr. Burge, you stated, um, one of your last  
23 statements, that you were aware that Mr. Santiago had backed  
24 into sanders on many occasions, with no incident? Have you  
25 ever witnessed that?

1 BURGE: I haven't witnessed it myself, but he's  
2 operated that equipment, which they have to back it into the  
3 sander rack and hang the sanders or load the sanders, um,  
4 depending on what the task is at the time.

5 DAVIES: All right. So you haven't witnessed Mr.  
6 Santiago do it. Are you -- having witne -- have you witnessed  
7 other employees, other operators perform that maneuver?

8 BURGE: Yes, sir.

9 DAVIES: In your experience, or in what you've  
10 witnessed, when backing into a sander, is it routine practice  
11 that drivers get out and get the picture, as you put it? Or is  
12 it routine that they do not and that they, due to some stated  
13 familiarity?

14 BURGE: They typically do not get out and look around,  
15 um, due to this task being performed multiple times and the  
16 equipment fitting in there, usually without any in --  
17 incidents.

18 DAVIES: Thank you, Mr. Burge. No further questions from  
19 me.

20 S. PARKER: Thank you. Okay. We're gonna -- thank --  
21 thank you for your, uh, testimony here, as a witness and  
22 stuff. And we know that you have to go, unless you have any  
23 closing response (inaudible).

24 BURGE: No, ma'am.

25 S. PARKER: Thank you so much. And you are excused.

1 BURGE: Thank you.

2 C. PARKER: Madam Chair?

3 S. PARKER: Yes?

4 C. PARKER: Um, if it pleases the committee, I know  
5 it's been a long day, I have one witness left, but, um, would  
6 you like me to call the witness?

7 S. PARKER: Yes. We want -- we know that we need to  
8 get them released, so yes, we want you to go ahead and move  
9 forward.

10 C. PARKER: Thank you. Um, I'd like to call Craig  
11 Santos. Good afternoon, Mr. Santos. Could you please state and  
12 spell your name for the record?

13 SANTOS: Yeah, it's Craig Santos. Santos is S-A-N-T-O-S.

14 C. PARKER: Thank you. What is your current position  
15 at the Department of Transportation?

16 SANTOS: Highway Maintenance, Supervisor I.

17 C. PARKER: And how long have you held this position?

18 SANTOS: Thirteen years.

19 C. PARKER: Did you supervise Mr. Santiago at the time  
20 of the, um, collision on -- in Jul -- July 2019?

21 SANTOS: Yes, I did.

22 C. PARKER: Um, are you familiar with the -- the work  
23 zone where he was working?

24 SANTOS: Yes, I am.

25 C. PARKER: And did you come to the collision after

1 the collision had occurred?

2 SANTOS: Yes, I did.

3 C. PARKER: And after observing what you had observed,  
4 did you come to a conclusion as to who was at fault for the  
5 collision?

6 SANTOS: Yes.

7 C. PARKER: What was your con -- conclusion?

8 SANTOS: My conclusion was it was Mr. Santiago's fault.

9 C. PARKER: And did you come to a conclusion as to  
10 whether that was an incident or a preventable accident?

11 SANTOS: Due to the fact that it was a backing accident,  
12 I deem that a preventable accident.

13 C. PARKER: And when you made that determination, um,  
14 as Mr. Santiago's supervisor, do you consider whatever the  
15 safety committee may have determined?

16 SANTOS: Yes. I -- I make recommendations. It is up to  
17 the Safety Committee to collaborate on each incident or  
18 accident, whatever you want to call it, to come up with a  
19 decis -- a decision whether it is a preventable, non-  
20 preventable incident.

21 C. PARKER: And -- and what was your recommendation?

22 SANTOS: My recommendation was it was a non-preventable  
23 accident.

24 C. PARKER: A non-preventable?

25 SANTOS: I -- I'm sorry. My recommendation was it was a

1 preventable. I'm sorry. I misspoke.

2 C. PARKER: Okay. So for the record, your  
3 recommendation was that it was a preventable accident?

4 SANTOS: Yes, ma'am. Sorry. My recommendation --

5 C. PARKER: So the next -- go ahead.

6 SANTOS: My recommendation -- it was a preventable  
7 accident.

8 C. PARKER: So as Mr. Santiago's supervisor, once you  
9 had made that, uh, determination, what was the next step in  
10 your disciplinary process?

11 SANTOS: The next step for me is to look at his, um,  
12 previous accidents, preventable accidents. And from there,  
13 that's how I determine discipline, whether it's, uh, his first  
14 accident, his second accident, so on and so forth.

15 C. PARKER: And -- and what did you discover when you  
16 commit -- when you prepared that review of his history?

17 SANTIAGO: Objection. That review is not contained inside  
18 any of this documentation.

19 C. PARKER: I'm sorry, I didn't hear.

20 S. PARKER: Are you --

21 SANTIAGO: She's referencing a material that's not  
22 present.

23 S. PARKER: So are you referencing a disciplinary  
24 action that's not present?

25 C. PARKER: I am asking him of his personal knowledge

1 of Mr. Santiago's disciplinary history.

2 S. PARKER: Well, yeah, I -- I'm gonna allow it.

3 SANTOS: So yes, I was aware of his previous history,  
4 from a backing accident that he had. I believe it was less  
5 than a year prior to this one. And he did receive a written  
6 reprimand for that. I was aware --

7 S. PARKER: Okay. And -- and so you considered that  
8 previous, uh, written reprimand in deciding what the next step  
9 would be with Mr. Santiago?

10 SANTOS: Yes, ma'am.

11 S. PARKER: And -- and what was your recommendation?

12 SANTOS: My recommendation was suspension, without pay.

13 S. PARKER: Does, um, Mr. -- does NDOT have a safety  
14 policy that requires a spotter when someone is backing up?

15 SANTOS: Yes, ma'am.

16 S. PARKER: If Mr. Santiago was backing up in the, um,  
17 July 2019 incident that we've been discussing, should he have  
18 had a spotter?

19 SANTOS: I believe so, due to the fact that he was  
20 outside of the work area where we were working. Um, he should  
21 have definitely had a spotter, in my opinion, yes.

22 S. PARKER: Did Mr. Santiago tell you, um -- well,  
23 we've established Mr. Santiago has agreed that he was in  
24 reverse and he had intended to go forward. So in your opinion,  
25 as an employee of the Department of Transportation, and a

1 supervisor for many years, would an employee be exercising due  
2 care if they are in reverse when they intend to go forward?

3 SANTOS: No, ma'am.

4 C. PARKER: When you went to the collision site in  
5 July of 2019, did you see the damage to the other vehicle?

6 SANTOS: Yes, ma'am.

7 S. PARKER: And how would you describe that?

8 SANTOS: There was, uh, significant front end damage to  
9 the car he backed into.

10 S. PARKER: If you could please look at exhibit 1 in  
11 the packet? This is the written reprimand.

12 SANTOS: Okay.

13 S. PARKER: On page 2, supervisor's signature, is that  
14 your signature?

15 SANTOS: Yes, ma'am.

16 S. PARKER: Reviewing this document, do you agree with  
17 the charges that, um, are cited in the written reprimand?

18 SANTOS: I believe he should have received suspension,  
19 without pay.

20 S. PARKER: Okay. Do you believe that the, um,  
21 prohibition and penalties that the written reprimand says were  
22 violated, do you believe that those probations and penalties  
23 were indeed violated?

24 SANTOS: Yes.

25 S. PARKER: So if we look at what these violations are

1 -- if you could help us out -- so next to each violation, in  
2 parentheses, it says first events, and then it has levels;  
3 second offense and levels. What are the levels? What do the  
4 levels signify?

5 SANTOS: The -- the le -- the level --

6 S. PARKER: For example --

7 SANTOS: Yes?

8 S. PARKER: Go ahead.

9 SANTOS: Go ahead. I'm sorry.

10 S. PARKER: So what is ta level one?

11 SANTOS: Is it okay if I reference -- if it -- is it  
12 okay if I reference prohibitions and penalties?

13 S. PARKER: Yes, absolutely.

14 SANTOS: Okay.

15 S. PARKER: Okay. You know what? that's a good idea.

16 So exhibit 7 is the prohibitions and penalties.

17 SANTOS: Okay. I will go to that.

18 S. PARKER: Let's go to exhibit 7, I apologize.

19 SANTOS: Okay. I'm there.

20 S. PARKER: Okay. So one of the charges to Mr.

21 Santiago was B-8. So let's take a look at B-8.

22 SANTOS: Okay.

23 S. PARKER: Have you found it?

24 SANTOS: Yes, ma'am. Could you please read what B-8 is?

25 SANTOS: Willful or careless destruction of, or damage

1 to state property.

2 S. PARKER: Okay. And then there's offenses, there's  
3 charges there, right? I mean, columns, excuse me.

4 SANTOS: Yes.

5 S. PARKER: First offense, second offense?

6 SANTOS: Yes.

7 S. PARKER: You see those?

8 SANTOS: Yes.

9 S. PARKER: So for the first offense, the level of  
10 discipline ranges from one to six?

11 SANTOS: Yes ma'am.

12 S. PARKER: So -- so what would that range be, as far  
13 as what would happen to the employee?

14 SANTOS: So according to this, uh, minimum would be a --  
15 I can try to find that (inaudible). So at minimum, they're  
16 giving us leeway for anywhere from a, uh, a warning, up  
17 through dismissal for that -- for that offense --

18 C. PARKER: (Inaudible).

19 SANTOS: -- one through six.

20 C. PARKER: For the first -- okay. For the first  
21 offense, it's one to six?

22 SANTOS: Yes, ma'am.

23 C. PARKER: What is it for the second -- second  
24 offense?

25 SANTOS: Second offense, minimum would be a four, which

1 is suspension, without pay for, uh, not less than six days or  
2 more than 30 days. The max will be dismissal.

3 C. PARKER: And then, if you look at F-2 to -- two  
4 more pages. If you're looking at the boxed page numbers, it's  
5 page number 12..

6 SANTOS: Okay.

7 C. PARKER: Okay.

8 SANTOS: Yes, ma'am.

9 C. PARKER: So F-2 was another one, um, that Mr.  
10 Santiago was charged with. Could you please read what that,  
11 um, P&P is?

12 SANTOS: Operating state vehicles or equipment in an  
13 unsafe or negligent manner resulting in damage to the state  
14 equipment or to other property.

15 C. PARKER: Okay. And then the first offense,  
16 recommended discipline is -- for allowed discipline is what  
17 levels?

18 SANTOS: Uh, one through six.

19 C. PARKER: Thank you. And then for a second offense?

20 SANTOS: Would be two through six.

21 C. PARKER: So the minimal for that violation would be  
22 a written reprimand. Is that correct?

23 SANTOS: Yes, ma'am.

24 C. PARKER: Uh, and for the committee, there are other  
25 violations on this written reprimand, as well. NDOT is not

1 abandoning those. But for the sake of time, I'd like to just  
2 move on if that's okay?

3 S. PARKER: Yes. Thank you.

4 C. PARKER: Sir, I'd like to turn to exhibit 8, which  
5 is the memorandum on this event for backing accidents. We  
6 spent some time on this memo today. Um, so I just have a  
7 couple of questions. Um, is this -- is this memorandum about  
8 only preventable accidents or does it also cover incidents?

9 SANTOS: Um, I believe it's disciplinary action on  
10 preventable accidents.

11 C. PARKER: Okay. Um, did you -- did you think about  
12 this memo when you issued the discipline for Mr. Santiago?

13 SANTOS: Yes, ma'am.

14 C. PARKER: In your experience as a supervisor at  
15 NDOT, how does the level of discipline provided to Mr.  
16 Santiago compare to the level of discipline for other  
17 employees who have a second backing collision, after they've  
18 already received a written reprimand for previous preventable  
19 collision?

20 SANTOS: In my opinion, it was less than.

21 C. PARKER: At any time, um, has Mr. Santiago ever  
22 denied to you that he was at fault for this collision?

23 SANTOS: No, ma'am.

24 C. PARKER: Um, Madam Chair, I have no further  
25 questions for Mr. Santos. I would open him up to other

1 questioners.

2 S. PARKER: Thank you.

3 SANTIAGO: Afternoon. Mr. Santos. In your experience with  
4 the DOT, are all backing accidents deemed preventable?

5 SANTOS: Yes.

6 SANTIAGO: So all backing accidents, no matter what the  
7 conditions are, whether it's a new vehicle, uh, a familiar,  
8 uh, or a vehicle that maybe an employee's not familiar with,  
9 and they're backing that vehicle, that is deemed a preventable  
10 accident?

11 SANTOS: In my experience, yes.

12 SANTIAGO: Okay. Um, so (inaudible) circle back here to --  
13 it says you -- you stated in, uh, Ms. Parker's questions that  
14 NDOT has a policy requiring that a spotter is required when  
15 backing. Right?

16 SANTOS: I didn't say required, as needed.

17 SANTIAGO: Yeah, as needed. So I believe she said -- she  
18 asked if it was required, was it t-- was the verbiage.

19 SANTOS: Yes. So spotters are -- are -- are required, as  
20 needed.

21 SANTIAGO: As needed.

22 SANTOS: Yes.

23 SANTIAGO: So if there was a spotter available, they  
24 should -- probably ought to -- they should use one, correct?

25 SANTOS: Absolutely.

1 SANTIAGO: Do you think a spotter's more available out on  
2 the highway or is the spotter more available in the yard?

3 SANTOS: If you are unaware of your surroundings, you  
4 should have a spotter, correct.

5 SANTIAGO: Okay. Um, could you clearly, uh, could you tell  
6 me what the line of discretion is on what you deem preventable  
7 versus an incident?

8 SANTOS: Um, so when I look at a, uh, preventable versus  
9 incident, I look at all the circumstances. Were you doing what  
10 was asked of you to do? Were you doing your normal course of  
11 work versus an incident? Could be you dropped a shovel,  
12 stubbed your toe type of thing.

13 SANTIAGO: Right.

14 SANTOS: Um, so I look at the scope of, were you doing  
15 what you were asked to do?

16 SANTIAGO: Okay. So is --

17 SANTOS: And I -- go ahead.

18 SANTIAGO: You got -- what was (phonetic) that?

19 SANTOS: (Inaudible).

20 SANTIAGO: So is, um, is backing into a sander rack, is  
21 that a common practice amongst highway maintenance workers? Is  
22 that -- that's part --

23 SANTOS: (Inaudible) --

24 SANTIAGO: -- (inaudible) that's a scope of their practice  
25 (phonetic)?

1 SANTOS: Absolutely.

2 SANTIAGO: So they -- they should be aware of all their  
3 surroundings as they participate in that, as they do -- they  
4 do it frequently, correct?

5 SANTOS: Sure. Yes.

6 SANTIAGO: Uh, um, we'll go ahead and reference, uh,  
7 believe I gave you a book over here, too. We're gonna go ahead  
8 and reference, uh, (inaudible) warrant -- exhibit 4. Did you,  
9 uh, were you present for the meeting on, obviously, you were  
10 when you issued the written reprimand on February 3rd, 2020,  
11 along with Mr. Kern?

12 SANTOS: Yes.

13 SANTIAGO: Okay. Um, do you have any discrepancies in this  
14 -- in this email that I sent to you, about the content of that  
15 meeting?

16 SANTOS: Um, do I have any discrepancies?

17 SANTIAGO: Yes. Is what happened -- was what -- that I  
18 sent to you in the email exactly what happened?

19 SANTOS: Uh, no.

20 SANTIAGO: Was there -- did you ever respond to me to --  
21 to -- to correct, per se? Um, I know the term. I'm quite --  
22 looking for it here -- with -- to dispute this?

23 SANTOS: No, I did not.

24 SANTIAGO: Were you instructed not to respond?

25 SANTOS: No, I was not.

1 SANTIAGO: Okay. So what do you dis -- what do you  
2 disagree with this, in this email?

3 SANTOS: Um, you rep -- you make a statement here. Um, I  
4 quote, "I am not sure why they just," -- you quote, I said --  
5 I quote, "I am sure -- I am not sure why they just can't let  
6 this go." I don't agree with that.

7 SANTIAGO: Is there any reason why you didn't email me  
8 back and say that that did not happen?

9 SANTOS: Because at the time you were under  
10 investigation for the accident, and I didn't -- not feel  
11 (inaudible) --

12 SANTIAGO: At this time, I wa -- at this time I was not  
13 (inaudible).

14 SANTOS: You were being investigated at -- for an  
15 accident.

16 SANTIAGO: Let the record reflect that Ms. Parker says  
17 that the investigation had concluded by this date, of February  
18 3rd, um, with -- in accordance with her, uh, specic --  
19 specificity of charges. Currently, at -- at -- at February 3<sup>rd</sup>,  
20 I was not under active investigation, because I was being  
21 administered the disciplinary action. So I would disagree with  
22 that. But that's -- we can agree to disagree. But, um, but you  
23 didn't respond because I -- you thought I was under active  
24 investigation, but you were -- I was still under active  
25 investigation. Is there a reason why you were administering

1 disciplinary action?

2 SANTOS: It's all part of the process.

3 SANTIAGO: So the process was still incomplete, but you  
4 were administering disciplinary action?

5 SANTOS: In my opinion, the investigation, up through  
6 giving you your reprimand, it's all part of the process.

7 SANTIAGO: That's -- that's not what I was asking. What I  
8 was asking was, you administer disciplinary action before the  
9 investigation is complete, because you're saying I'm still --  
10 I'm still under investigation, per this email February 3rd,  
11 correct?

12 SANTOS: Yes.

13 SANTIAGO: So there was still an active investigation, but  
14 yet you -- you and your staff were ready to administer a  
15 disciplinary action at that time. But the act -- the  
16 investigation was still -- was still progressing. It was not  
17 complete at that point? That --

18 SANTOS: When I say you were --

19 C. PARKER: (Inaudible), Your Honor -- Madam Chair? It  
20 appears that -- I'm objecting. Mr. Santiago is arguing with  
21 the witness. He's not asking questions.

22 SANTIAGO: Everything I've stated is a question.

23 S. PARKER: So, yeah. And -- and I -- I'm gonna  
24 actually sustain. Well, no, I'm gonna overrule. I want -- I  
25 wanna know the answer to that question, too, 'cause these

1 dates are not matching. So I just -- I just wanted to clarify.  
2 I -- this is gonna be a question I ask anyway. So just  
3 reiterate your question.

4 SANTIAGO: Okay. So on February --

5 S. PARKER: He hasn't answered it already. Cause I --  
6 I --

7 SANTIAGO: -- on -- on February 3rd, we were -- so just,  
8 uh, so we're all on the same document, if public is out there,  
9 wants to see it, it's exhibit 4. It's an email sent to Mr.  
10 Craig Santos. I CC'd Mary Gordon, Jason Peard, Brad Burge,  
11 Mike Feast, Dan Turner, none of which responded at any time.  
12 What Mr. Santos is stating, is that he did not reply to this  
13 email on the grounds that this was still an active  
14 investigation. Is that correct?

15 SANTOS: I am saying, under my opinion that you were  
16 still being investigated. This is all part of the process. And  
17 I was not comfortable responding to your email.

18 SANTIAGO: So I was still being investigated when you  
19 administered -- at -- at this meeting, while you administered  
20 the disciplinary action via the written reprimand.

21 S. PARKER: So he's given his answer. We're  
22 (inaudible) --

23 SANTIAGO: Right. That's what I'm trying to state, is how  
24 can we -- how can we be -- we give a written reprimand if I'm  
25 still under investigation?

1 S. PARKER: Right. And that, you know what, just go  
2 ahead and move on.

3 SANTIAGO: Yeah.

4 S. PARKER: He's answered your question, whether you  
5 agree with it or makes sense or not.

6 SANTIAGO: So, um, previous -- previous to that, uh, on  
7 this place (inaudible) -- I believe that's no further, as  
8 well.

9 UNIDENTIFIED: Excuse me, Madam Chair. This is  
10 (inaudible). Can I ask a clarifying question?

11 S. PARKER: Yes.

12 UNIDENTIFIED: Um, Mr. Santiago, when did you send the  
13 email to Mr. Santos? Uh, typically, there's a sent --

14 SANTIAGO: What did sh -- she say?

15 UNIDENTIFIED: -- where it states -- where (inaudible)?  
16 And I don't see that on -- at least on my exhibit,  
17 specifically a sent date and time.

18 SANTIAGO: Um, I sent it shortly after --

19 UNIDENTIFIED: (Inaudible) on my email. So I don't --

20 SANTIAGO: Can she hear me?

21 S. PARKER: She -- what -- I think she can. But you  
22 may have cut out, 'cause there's a little lag.

23 UNIDENTIFIED: (Inaudible).

24 SANTIAGO: What is her name? I'm sorry, I didn't --

25 UNIDENTIFIED: (Inaudible), Mr. Santos?

1           SANTOS:    Yes, ma'am. I'm sorry, there's people talking.  
2 I didn't hear you.

3           UNIDENTIFIED:  Oh, I'm sorry. I -- I (inaudible) on the  
4 email that you sent to Mr. Santos (phonetic).

5           SANTOS:    Okay.

6           UNIDENTIFIED:  Typically, there's a sent date and time,  
7 when you send the email, and it doesn't clarify that. So is  
8 this a draft email that you included in your packet?

9           SANTIAGO: No, it was not. It was San --

10          UNIDENTIFIED:  Because on the one on the email that you  
11 sent to Carrie, it says the sent date and time, and it doesn't  
12 have that on the one that you sent to Mr. Santos.

13          SANTIAGO: I don't know if that -- I don't know why the  
14 date's missing on it, but I did send that email. Okay. And let  
15 the record reflect that Mr. Peard did, or excuse me. Mr.  
16 Peard, sorry. There's a lot of other names. Mr. Santos did  
17 receive that with his testi -- in -- in his testimony, he  
18 acknowledges that that email was sent/received, but he did not  
19 reply as -- reply, as he believed I was still under  
20 investigation. And then, if you read through that email I  
21 sent, shortly after that meeting, at -- which was at 8:10 on  
22 February 3<sup>rd</sup>, I -- I literally -- my office is right next door  
23 to where the meeting, uh, occurred. So I would ru -- I -- I  
24 would be, uh, inclined to say that it's probably 20 minutes to  
25 30 minutes after, no later than an hour after that meeting.

1 UNIDENTIFIED: All right.

2 UNIDENTIFIED: (Inaudible). Thank you.

3 S. PARKER: Okay. And you said you were done, right?

4 SANTIAGO: Yes, ma'am.

5 S. PARKER: Okay. So, um, any other -- any, uh, oh,  
6 uh, redirect? Yeah. Counsel Parker -- same last name as me. I  
7 know, it's hard for me to get it out. Sorry.

8 C. PARKER: (Inaudible) Carrie Parker for the record.  
9 Um, Mr. Santos, um, regarding this grievance, which is Exhibit  
10 9, do you see, um, on exhibit nine, the event date is  
11 referenced as February 3rd, 2020?

12 SANTOS: Um, some of it --

13 C. PARKER: (Inaudible) --

14 SANTOS: -- yeah. Some of it's --

15 C. PARKER: (Inaudible).

16 SANTOS: -- yes. February 3rd, 2020. Yes, ma'am.

17 C. PARKER: Right. So at the time that Mr. Santiago,  
18 uh, allegedly sent you this email, had you a received  
19 grievance?

20 SANTOS: Can you ask that one more time? I'm sorry.

21 C. PARKER: If you don't remember -- if you don't  
22 remember, that's okay.

23 SANTOS: (Inaudible), yeah.

24 C. PARKER: So at the time that you received this  
25 email, that is exhibit 4 --

1 SANTOS: Right.

2 C. PARKER: -- had you -- had you received a grievance  
3 from Mr. Santiago?

4 SANTOS: I -- I don't remember.

5 C. PARKER: Okay. Um, according to the email, you had  
6 a meeting with Mr. Santiago about the written reprimand. Do  
7 you remember that meeting?

8 SANTOS: Yes, ma'am.

9 C. PARKER: During that meeting, did Mr. Santiago say  
10 that he was gonna grieve the reprimand?

11 SANTOS: Not that I recall.

12 C. PARKER: I'm sorry, I didn't hear.

13 SANTOS: Not that I recall.

14 C. PARKER: Okay. Um, but you were aware, from that  
15 meeting, that Mr. Santiago refused to sign the written  
16 reprimand, is that right?

17 SANTOS: Yes.

18 C. PARKER: And how would you describe Mr. Santiago's  
19 reaction to receiving the written reprimand?

20 SANTOS: Um, so I did do -- make a few notes after the  
21 meeting, just below the, um, summary. And when I presented him  
22 with the written reprimand, he told me that that's why he  
23 wanted to transfer. And -0- and that's when I stated, um,  
24 they're not gonna let this go, because you have transferred.  
25 Um, he was angry, in my opinion, he was angry, and did not

1 want to sign it.

2 C. PARKER: Okay. Um, so in your opinion as a  
3 supervisor, if someone commits misconduct while you supervise  
4 them, and then transfers out, does that mean they don't get  
5 disciplined for whatever happened, uh, when they were in your  
6 team?

7 SANTOS: haven't personally experienced that before.

8 C. PARKER: Okay. But Mr. Santiago still works for the  
9 Department of Transportation?

10 SANTOS: Yes.

11 C. PARKER: Correct?

12 SANTOS: Yes.

13 C. PARKER: Um, so -- but you did meet with Mr.  
14 Santiago as a part of the grievance resolution process, isn't  
15 that right?

16 SANTOS: Yes, ma'am.

17 C. PARKER: I don't have any further questions, Madam  
18 Chair. Thank you, Mr. Santos.

19 SANTOS: Thank you.

20 S. PARKER: Okay. I'm gonna ask members if they have  
21 quest -- questions to add?

22 SANTOS: I don't see any hands in the (inaudible).

23 S. PARKER: Okay, thank you. It's just awkward.

24 UNIDENTIFIED: (Inaudible) dizzy.

25 S. PARKER: I know. I -- I do have a couple of

1 questions. Stephanie Parker, for the record. I keep forgetting  
2 to tell people. And thank you, Counsel Parker, for re-  
3 addressing who you are, and stuff when you speak. But please  
4 remember, everybody, please just state your name. And  
5 committee members have been great at this, too. I haven't been  
6 so great, but, um, uh, Stephanie Parker for the record. So my  
7 first question is, um, you are part of the safety committee?

8 SANTOS: No, ma'am.

9 S. PARKER: Okay. And, um, do you get recommendations  
10 from the safety committee, based on the accidents or the  
11 incidents?

12 SANTOS: No, ma'am.

13 S. PARKER: Okay. All right. That wasn't clear to me  
14 earlier. Okay. And, um, so the resolve of whatever they did,  
15 did not come to you before the decision to -- to reprimand,  
16 correct?

17 SANTOS: I don't believe so.

18 S. PARKER: Okay. All right. Um, and then my second  
19 question was on policy. We talked about policy, that everybody  
20 is subject to the policies.

21 SANTOS: Right.

22 S. PARKER: And that had to do with, um, uh, I  
23 believe, was it spotters or was it knowing your surroundings?  
24 Shoot, let me go back. Sorry. Um, would you say that knowing  
25 your surroundings, that policy, is a requirement for all

1 employees?

2 SANTOS: Absolutely.

3 S. PARKER: And at all times. Okay. And I -- and --  
4 and I'm asking this, 'cause we allow it, talking about  
5 history. So have you also, um, had other incidents that you  
6 did rep, uh, reprimands -- or other incidents, no, other  
7 incidents that involved backup incidents or accidents,  
8 whatever you, like, wanna call them, originally not  
9 discipline.

10 SANTOS: Uh, not that I can recall.

11 S. PARKER: And --

12 SANTOS: But I have discipline for all backing  
13 incidents.

14 S. PARKER: You have for all backing accidents?

15 SANTOS: For all backing accidents.

16 S. PARKER: That was my questions. Yes, Co-chair  
17 Davies?

18 DAVIES: Thank you, Madam Chair. Gwyn Davies, for the  
19 record. Uh, Mr. Santos, um, with regards to first incident,  
20 second incident, um, what is the time period that that  
21 incident, uh, accident -- uh, I don't even -- I want to go  
22 back to P&P and choose my word more carefully -- offense. With  
23 regards to first offense and second offense, what is the time  
24 period that NDOT has for an offense remaining, uh, for want of  
25 a better word, accountable, creditable -- when does an offense

1 become a non-offense? I understand that there are some  
2 offenses that are legally bound to five years, DUIs and stuff.  
3 But for -- for the mundane stuff, can you tell me? Do you --  
4 do you have an answer to that?

5 SANTOS: So, to the best of my knowledge, um, once you  
6 receive a written reprimand, it goes into your permanent file  
7 and it never goes away.

8 DAVIES: Okay. Thank you. So offenses are permanent,  
9 then?

10 SANTOS: Yes, sir.

11 DAVIES: Thank you. Um, with -- do you have any  
12 information on the, uh, sorry. So there was 18 months between  
13 these two accidents of Mr. Santiago's? Um, no. I -- I have  
14 asked that question. My question is, um, the incident -- do  
15 you have knowledge of the incidents in September of '19 and  
16 October of '19?

17 SANTOS: I -- Which incidents -- or -- should I  
18 reference?

19 DAVIES: Um, uh, well, if you go to the safety committee  
20 minutes, there are two incidents quoted, uh, two, yes. Well,  
21 an incident can be an accident, but an accident isn't  
22 necessarily an incident. This is like toads and frogs, isn't  
23 it?

24 SANTOS: Yes. So you're referencing the safety committee  
25 minutes --

1 DAVIES: Yes, sir.

2 SANTOS: -- for November 13<sup>th</sup>?

3 DAVIES: My -- my question -- my question is, um, the  
4 incident -- going with the titles used on the pages, the  
5 incident was int -- was investigated and, uh, mechanical  
6 adjustments appeared to have been made to equipment in order  
7 to prevent repetition. The preventable -- it says the employee  
8 said he had no idea how it happened and will ensure it doesn't  
9 -- he does a pre-trip in future, supervisor's -- no comment.  
10 Was the employee disciplined for that?

11 SANTOS: I have no knowledge of anything on this safety  
12 (inaudible) --

13 DAVIES: So it was classed a preventable accident, but  
14 we have no idea what -- what level of, uh, uh, consequence  
15 there was to it? It just, uh, the safety committee looked in,  
16 uh, was made aware of an accident, where at the end of the  
17 day, somebody noticed damage and had no idea how it happened.

18 SANTOS: That's what it says here, yes.

19 DAVIES: Okay. And -- and we -- okay. Thank you. Uh, I  
20 have no further questions.

21 SANTOS: Thank you.

22 S. PARKER: Thank you. Okay. All right. You're  
23 excused. Thank you so much. Thank you. Appreciate your  
24 (inaudible) --

25 SANTOS: Thank you very much. Thank you, for your time.

1 DAVIES: Madam Chair?

2 S. PARKER: Uh, yes, Co-chair Davies?

3 DAVIES: Uh, can we please take some form of break? My -  
4 - my bladder is pushing my left lung into its right lung and  
5 I'm gonna die of asphyxiation.

6 S. PARKER: Yes, but literally only five minutes this  
7 time, please, 'cause we have people that are in the waiting  
8 room. We just can't go for extended periods.

9 DAVIES: I -- I'll -- I'll take two minutes.

10 S. PARKER: No, I know you will.

11 DAVIES: I'll take two minutes. So just --

12 S. PARKER: Thank you. Okay.

13 DAVIES: Thank you. I'm back.

14 S. PARKER: Okay. Okay, we'll go ahead, reconvene.

15 DAVIES: Yes, ma'am.

16 S. PARKER: Counsel, um, Parker, uh, we're finished  
17 with your presentation. Would you like to proceed?

18 C. PARKER: Um, Deputy Attorney General, Carrie Parker  
19 for the record. My understanding of the process is next, a  
20 closing argument from each side. Um, I'm okay with proceeding  
21 to the closing arguments.

22 S. PARKER: Okay. So you've concluded with your  
23 presentation. Awesome. Thank you so much. I appreciate that.  
24 Okay, so we'll go ahead and start with closing statements.  
25 But, uh, for, uh, Mr. Santiago, keep in mind the time, uh --

1 SANTIAGO: Yes, ma'am.

2 S. PARKER: We've gone way over the hour that is  
3 typically allowed for --

4 SANTIAGO: Yes, ma'am. Uh, you ready?

5 S. PARKER: Yes, (inaudible).

6 SANTIAGO: Uh, just real brief, in and conclusion. I'll  
7 make this as fast as possible. Um, through these last  
8 exhibits, uh, and these witnesses provided by Ms. Parker, um,  
9 I believe it was pretty apparent that there's no consistency,  
10 uh, in the disciplinary actions. That varies from who was  
11 there and what happened, whatever, they don't follow the  
12 procedures, uh, to the T, as if they claim. Um, it basically  
13 depends on the supervisor at that, too. No policies are being  
14 full -- or being followed. Another example is when NDOT writes  
15 me up for backing without a spotter, which all of those  
16 gentlemen stated is a policy, that there's supposed to be a  
17 spotter. They write me up. Well, I'm out on the roadway where  
18 a spotter's not quite present, but they deem somebody who's in  
19 a yard where there's a good chance that there's another  
20 individual that could help them back up, and they deem it an  
21 incident versus that. Um, these trucks vary, from -- from  
22 truck to truck, no matter what. There's different specs for  
23 all these different trucks. So the excuse of that truck was  
24 outta spec, really holds no merit. We get in different trucks,  
25 like they said, I worked for them for almost 10 years. I -- I

1 get in different trucks. Some are Western Stars, some are  
2 shorter, longer, taller, wider, whatever, weight more. It's --  
3 it's -- it is what it is. They're just like human beings, you  
4 know? So the merit of, well, we -- we're gonna pick and choose  
5 that this is an incident, because this is a new truck and it's  
6 larger. It -- it has -- it holds no merit. That's -- that's  
7 inconsistent, because we -- we all get in different vehicles.  
8 You're new vehicle's different than mine. Uh, Santos statement  
9 that the, uh, statement also, when he just testified, stated  
10 that, uh, he acknowledged that, uh, quote-unquote, what he  
11 told me per se, was very similar to what I recall and what he  
12 recalled. So they would not let this go. That -- or that his  
13 init -- or his superiors would not let this go. Right there  
14 shows that they were very vindictive and had -- and -- and  
15 wanted to pursue something, has, I don't know, was  
16 retaliation, for me leaving or whatnot. I'm -- I'm unsure on  
17 it. But it -- it's -- it -- it seems like I said, I've been  
18 singled out, and it's -- as much as they -- they sat right  
19 there and said all backing accidents. Santos said all backing  
20 accidents result in at least the written reprimand. Why was  
21 this backing accident, that I -- I proved, and there was not?  
22 Every single one of them said that it's supposed to be. So,  
23 either all three of them or whoever was involved and knew the  
24 gentleman or a person, whoever was involved. And, we just  
25 gonna turn a blind eye to that? I think that, with respect to

1 the committee, this is a chance for the committee to lay the  
2 groundwork or correct the -- or I should say correct the  
3 actions of NDOT and make this -- so, make -- make it so NDOT  
4 is held accountable, across the board. I believe this is a  
5 great chance to -- to correct these actions and save not only  
6 the state money and time, but build maybe the, uh, NDOT will  
7 realize that there is flaws in their system. And I'm all for  
8 growth as a division. We gotta grow. And if it takes me going  
9 through this whole process with you guys -- and thank you  
10 again for the time. If -- if it saves employees and it helps  
11 with employee retention, I believe we should go about it that  
12 way. And I -- I have no quorums, personal quorums against  
13 anyone that testified or anything here. I -- we got all -- we  
14 all gotta work together. At the end of the day, we're all  
15 human. But, um, my biggest thing and why I grieved this, was  
16 that the inconsistency. I was not being treated as -- as --  
17 same as other employees. Like I said, the, the, um, we can't  
18 lay the groundwork for progressive disciplinary action if we  
19 turn a blind eye to that individual's first -- first backing  
20 accident. It all starts at step one, just like anything else,  
21 where you progress. It is what it is. But I would hope that  
22 the committee realizes that the -- the end NDOT's actions were  
23 not consistent with the laws -- and, um, policies and  
24 procedures, as which they stated. Um, and I -- I understand  
25 that Ms. Parker and her defense, they -- they preferred --

1 they focused more on the accident and the contents of the  
2 accident, but not so much as to the proceedings of how it was  
3 handled. As such with that, the accident, or the statement by  
4 Mr. Santos -- excuse me --, being that he wasn't even sure the  
5 investigation was complete when this written reprimand was  
6 issued to me. When do we know it's complete? Excuse me,  
7 (inaudible), I got a frog in my throat. You're good, you're  
8 okay.

9 S. PARKER: Are you sure?

10 SANTIAGO: Yeah, I'm good.

11 S. PARKER: Okay. All right. Um, Counsel Parker, would  
12 you like to provide your closing statement?

13 C. PARKER: Thank you, Madam Chair. Deputy Attorney  
14 General Parker, for the record. This grievance is about Mr.  
15 Santiago. This is about the fact that he admitted to a  
16 preventable accident in the public, in a public lane of  
17 traffic, where he was in the wrong gear, and he backed into  
18 the car that was parked behind him. This is not about a  
19 sander, unit 841. This is not about whether other employees  
20 should be disciplined. The EMC does not have authority to  
21 discipline other employees. The EMC can only address Mr.  
22 Santiago's written reprimand, the facts that support it, he  
23 admits. His grievance should be denied, because he has the  
24 burden of proof. He's provided only speculation, and he has  
25 admitted to the facts underlying the written reprimand. He

1 admitted (inaudible) this was his second, preventable backing  
2 accident. He was disciplined for this with a written  
3 reprimand, in 2018. This accident occurred in 2019. I think  
4 it's important for the committee to remember, because, you  
5 know, that that is two years from where we sit today, but the  
6 act two, preventable accidents occurred close in time. The  
7 Unit 841 that he keeps bringing up, was ruled an incident,  
8 which is not treated the same as a preventable accident. It  
9 occurred on the yard, did not involve any damage to a third  
10 party member of the public's vehicle, and it could be tied  
11 directly to something that was not in the employee's control,  
12 which was the vehicle being out of spec. Mr. Santiago has  
13 provided no excuse for his preventable accident, and indeed,  
14 has admitted to it. These two incidents are not the same.  
15 They're not comparable at all. The prohibitions and penalties  
16 approved by the Personnel Commission provide discipline  
17 ranges, because agencies have discretion in how to handle --  
18 involve, uh, incidents, excuse me, with their employees. There  
19 was a range for one to six for the first events. That's a  
20 range, meaning that agency has discretion and they can go and  
21 look at the circumstances, think about the history of the  
22 employee. As Mr. Santos testified, what was he (inaudible),  
23 what was the scope of his job, and what ended up happening?  
24 This grievance is not about going back through safety  
25 committee minutes, figuring out if somebody should have been

1 disciplined, somebody else shouldn't have been disciplined.  
2 The fact is, Mr. Santiago should have been disciplined. And he  
3 was. He is asking this committee to give him no discipline for  
4 backing into a member of the public's vehicle when he was in a  
5 lane of traffic and a light turned green. That is  
6 unacceptable. That cannot be (inaudible). The prohibition and  
7 penalties provide discretion to the agency. The agency  
8 exercised its discretion. (Inaudible) for Mr. Santos, he  
9 would've preferred a suspension, based on the fact that this  
10 was the second backing violation. Regarding the email that Mr.  
11 Santiago focused on with Mr. Santos, Mr. Santos had just  
12 provided Mr. Santiago with a written reprimand that Mr.  
13 Santiago refused to sign. He was visibly angry. He sent Mr.  
14 Santos an email that was argumentative, tried to pin him down  
15 on statements that Mr. Santos testified he did not make. He  
16 had no obligation to respond to that email. And Mr. Santiago's  
17 speculation about why he didn't respond is not evidence. When  
18 Mr. Santos received a grievance from Mr. Santiago and he  
19 trusted the process. He met with Mr. Santiago about the  
20 grievance and it went up through the chain. And through the  
21 responses, you can see, uh, committee members, each  
22 supervisor, all the way up to Tracy Larkin Thompson  
23 (phoenetic), who has retired, all looked at what he had to  
24 say. They all considered what his arguments were, and they  
25 believed that the written reprimand was reasonable. And I

1 submit to the committee that it is, that Mr. Santiago did not  
2 fulfill his burden. And I would, um, rest for the committee.  
3 Thank you so much for your time. I know this has been a very  
4 long day and I really appreciate it. Thank you so much.

5 S. PARKER: Thank you. Thank you. Okay. At this time,  
6 uh, no participants, except for members will be able to  
7 deliberate -- or deliberate, um, unless you're asked a  
8 question. Okay. So, um, we're gonna enter into deliberate. Oh,  
9 I'm sorry. Co-chair Davies. I didn't see.

10 DAVIES: I just wanted to make sure we're in  
11 deliberation. That's what we said, right?

12 S. PARKER: Yes. Sorry.

13 DAVIES: (Inaudible).

14 S. PARKER: Mumbling -- I'm mumbling. Yes. We're going  
15 -- moving into deliberations now.

16 DAVIES: I -- I -- I'm sorry. I've had issues with my  
17 hearing all day and, uh, I just wanted that clarification.  
18 Thank you. So anybody wanna start or do I get to start or --  
19 you're the boss, Madam Chair.

20 S. PARKER: You can start. I'm only the chair. This is  
21 a committee.

22 DAVIES: Only? The chair is a very powerful position.  
23 Ma'am, you steer the ship.

24 S. PARKER: So please start.

25 DAVIES: The -- the -- where I'm at is, is the question

1 of the -- about the grievance. The management, uh, sorry, I'm  
2 having difficulty with my hand and I can't get back to the  
3 page. Um, the one side wants this -- one side wishes to, uh,  
4 argue the point that there was an accident and that somebody  
5 should be held to account for an accident. The other side  
6 wishes to state there was an accident. And that punishment for  
7 the accident represents an injustice, 'cause that's what  
8 grievances are -- right? -- that there was an injustice that I  
9 was held to account for this accident, but others are not held  
10 to account for their accidents, um, but not denying that there  
11 was an accident. I kind of feel trapped at that point, because  
12 there was an accident. I've seen pictures of the accident,  
13 although I'm not allowed to refer to those, 'cause that  
14 evidence was discarded, but there was an accident. Um, we're  
15 not arguing that. The -- the grievance states, uh, harassment,  
16 discrimination, uh, um, again, that's not us. But if you read  
17 beyond that, the question is, was -- was there an injustice in  
18 that there is an unfair application of, uh, application of,  
19 uh, punishment? Uh, um, all backing accidents -- are all  
20 backing in -- I -- are all ac -- it is the toad and frog  
21 thing. Is a -- is -- a frog can be a toad, but a toad can't be  
22 a frog. Um, are all incidents preventable accidents, are all  
23 accidents preventable incidents? I -- I'm not convinced that  
24 you can just turn around and say, we're not going to -- well,  
25 this -- this was an incident, not a preventable accident. And

1 that's the injustice right there. That, uh, Mr. Santiago,  
2 although the incident is -- is, uh, almost, uh, 22 months  
3 after his accident, he is showing -- and -- and I wasn't able  
4 to obtain confirmation that the preventable accident actually  
5 led to punishment, either. So yeah, he's been singled out. Um,  
6 should he have been -- should something have been said? Yes,  
7 he was -- he was in an accident. Something should have been  
8 said. But his question, I believe is, why am I being punished  
9 when this isn't being applied equally? And he's thrown enough  
10 question in my case. that I kind of feel that that -- I -- I'd  
11 like to hear somebody else's opinion. But at this point, I'm  
12 like, he has thrown enough doubt in my mind that, you know,  
13 they're not applying their standards consistently. And that  
14 represents an injustice, which is what a grievance is.

15 BAUER: Ms. Chair, this is Jennifer.

16 S. PARKER: Are you done? Are you done, Co-chair  
17 Davies?

18 DAVIES: I am done. Thank you. Sorry. Yes, that's what -  
19 -

20 S. PARKER: Okay.

21 DAVIES: -- my (inaudible) pause was at the end. I  
22 apologize.

23 S. PARKER: Okay.

24 BAUER: Jennifer knew.

25 S. PARKER: Thanks. Go ahead.

1           BAUER:       Thanks, Gwyn. Jennifer Bauer, for the record.  
2 Um, thanks for going first, Gwyn. I, um, respectfully, I'm  
3 going to, um, push back a little bit on some of that  
4 rationale, and, um, remind the committee that this is, um,  
5 this committee exists and is, um, under the jurisdiction of  
6 Administrative Procedure Act, NRS 233B, in Nevada (inaudible)  
7 revised statutes. So therefore, we do not have a duty to  
8 decide our decisions, based on a shadow of doubt. We have a  
9 duty to decide based on a preponderance of evidence. And I say  
10 that, because, um, when we decide these matters, it's the  
11 burden of the grievance to demonstrate simply with a  
12 preponderance of evidence, or it's the failure of the grievant  
13 to do so, not necessarily whether there is doubt. This isn't a  
14 criminal proceeding. Um, off my soapbox. Not an attorney. Did  
15 not stay at a Holiday Inn Express last night. However, um,  
16 when we look at some of the arguments the grievant has made --  
17 and I understand the relevance of the arguments -- so when we  
18 look at the argument that the grievant made about the sticker  
19 on the vehicle -- I get it. But I Googled on my phone. I  
20 wasn't shopping on eBay. I literally Googled Webster's  
21 dictionary, um, for the definition of damage and -- damage and  
22 destruction. And a sticker does not meet that definition. Um,  
23 when we look at comparable events and whether there was or was  
24 not discipline issued, the incident that we heard management  
25 from the agency describe about the vehicle that didn't meet

1 spec backing into, was as testimony indicated, out of the  
2 grievant -- or out of the employee's control. When we look at  
3 a vehicle in a traffic lane, on a highway, in a -- a primary  
4 road of Nevada, a primary highway, I believe that very much is  
5 within the control of the employee, or the driver. So if I  
6 were to drive my own personal vehicle from this meeting today,  
7 and if I were to be in a travel lane, and if I were to be in  
8 reverse, and I were to hit the gas or release the clutch or  
9 whatever, and back into someone, I would be at fault, because  
10 that is my control and that is preventable. And so that, to  
11 me, helps clear up the difference between incident and  
12 preventable action. So then, when we look at the prohibitions  
13 and penalties, the prohibitions and penalties allow, with the  
14 minimum and maximum of offenses for second and third, they  
15 allow the employer to provide some discretion, based on the  
16 egregiousness of the event. And so I think that NDOT has  
17 actually done that. And I'll be as bold to say that, um, NDOT  
18 actually did a favor to the grievant by making procedural  
19 errors, because prohibitions and penalties allow for a much  
20 more serious level of discipline to be issued. Um, however,  
21 for this second offense that is not disputed, it is literally  
22 the minimum level of discipline, according to the prohibitions  
23 of penalties, that a written reprimand be issued. So, um, I  
24 don't see that there is a preponderance of evidence that the  
25 agency violated any policies, laws, or regulations.

1 S. PARKER: So what I'm gonna throw out there -- and I  
2 should have brought this up earlier, but it just dawned on me.  
3 I -- I don't know why I didn't put this together. I -- I get  
4 that all preventable -- this is a preventable accident. Um, I,  
5 I guess my question is why? And I'm kind of leading with Gwyn.  
6 I know it's not our jurisdiction. (Inaudible) way from July  
7 2019, notice of investigation, August 14th, 2019, and we wait  
8 until February 3rd, 2020, to -- to issue a written reprimand  
9 for a second. I mean, that time frame's kind of (inaudible) --

10 BAUER: Madam Chair, I --

11 S. PARKER: -- (inaudible), Jennifer, I'm sorry.

12 BAUER: Um, you just touched on something I forgot to  
13 mention.

14 S. PARKER: Okay, thank you.

15 BAUER: The other thing I was looking on my phone,  
16 while not shopping on eBay is, um, I looked up the statute for  
17 NRS 2843385, because NRS 2843387 refers to 385 for the  
18 severity of the discipline, for the timeframe that the notice  
19 of the, um, the administrative investigation must be completed  
20 and a discipline issued. And, um, it does talk about  
21 specifically, um, suspension, demotion, termination. It does  
22 not talk about paper, if you will, a written reprimand. So  
23 there is -- so to me, there is no violation of a law, record,  
24 policy in the timeframe at which the written reprimand was  
25 issued, because it is not in conflict with NRS.

1           S. PARKER:       Not in conflict. And then, since anything  
2 can stick in some of these files for 18 years, as opposed to  
3 18 months, then, um, so they can wait three years to take  
4 action (inaudible). That -- that's my concern, you know, to  
5 decide, okay. I'm gonna take action on you now, for something  
6 that you did -- I -- I -- I -- I agree. It just came up --  
7 just something that, uh, the grievant mentioned. When did the  
8 -- and towards the end of the (inaudible), um, when did the  
9 investigation end? So, um, yeah. Okay. So, and -- and also I  
10 wanna throw out there, it's unfortunate the grievant mentioned  
11 that you couldn't get witnesses or others that stated that  
12 they had different discipline, because they are afraid of  
13 retaliation. So that's -- that's concerning. And -- and  
14 although Mr. Santos said that all of his preventables, he does  
15 issue discipline process. That was (inaudible) to me, as well.  
16 So that showed up (inaudible). (Inaudible).

17           DAVIES:       So it -- it -- this is Gwyn. I -- I'm gonna ask  
18 a question, because I've got the last sheet of the evidence,  
19 which says, you know, which has the 387 printed out on it. It  
20 -- is -- is it my understanding, then, that we're saying that,  
21 per the NRS, if you're going to get a serious slap on the  
22 wrist, these are the rules. And that, uh, effectively, there's  
23 120 days for this to happen, but if it's a written reprimand,  
24 you can go back three years or 18 months?. Why is there a  
25 timeline for one and not for the other, or? I would say that

1 the timeline for one is implied by the other.

2 BAUER: Ms. Chair, this is Jennifer.

3 S. PARKER: Yes.

4 DAVIES: Please teach me, 'cause I'm trying to  
5 understand here.

6 BAUER: At the risk of becoming a witness myself, I'm  
7 gonna share my experience as a tenured member of, um, the  
8 committee, and as a 25 year state employee. Um, and I'm also  
9 not gonna get on my phone, yet, unless you need me to, Gwyn.  
10 But there is a --

11 DAVIES: But, I'm saying --

12 BAUER: -- statute. There is a stat --

13 DAVIES: -- I'm just saying, 387 is on the last page of  
14 the evidence packet that we did accept.

15 BAUER: Jennifer Bauer, again, for our -- for the  
16 record. There is a statute or regulation that talks about  
17 timely issuance of discipline. And so, timely can be  
18 subjective. And that is why written reprimands, I believe, can  
19 come to the employee management committee. And then, more  
20 severe discipline actually has another venue, or a different  
21 venue, I should say, where it can be, um, it can be appealed  
22 through the hearings division. So timely discipline -- and the  
23 EMC has opined, and the EMC has decided on timely issuance of  
24 discipline. We have ruled, um, in favor of the grievant. We  
25 have upheld it, or we have granted, we have denied. And so

1 that's what we look at, is the timely issuance of discipline.  
2 where the written reprimand was issued here. But, um, I'm not  
3 aware of a statute that specifically says you must issue a  
4 written reprimand within 90 days, or whatever. It just says  
5 timely.

6 S. PARKER: Thank you. Thank you for that  
7 clarification.

8 DAVIES: All right. Thank you.

9 S. PARKER: Member Scott, do you have any --

10 DAVIES: (Inaudible).

11 S. PARKER: Go ahead.

12 DAVIES: Are we looking at, uh, I mean, so is it my  
13 correct understanding to say that Mr. Santiago was -- was  
14 punished, uh, was to be punished, uh, with a disciplinary  
15 process that's -- that's detailed in 387. And when they drop  
16 the ball on that, they get a second stab at it, which is  
17 venturing into double jeopardy. Oh, I didn't get my conviction  
18 for this, I'm going with that? That's -- that does sound like  
19 double jeopardy to me. They don't get a second stab. If they  
20 drop the ball on a legitimate attempt to follow -- and I'm not  
21 saying -- he backed into the guy, and he -- he dinged the --  
22 he dinged the Buick. I saw it. But they failed to follow their  
23 own regulations and -- and do the first disciplinary  
24 correctly. So they get to go back into a second one? That's  
25 double jeopardy, is it not? And I wanna be told def -- double

1 jeopardy isn't within our purview to look at, either?

2 S. PARKER: Counsel?

3 DAVIES: I -- I'm trying to understand this.

4 WEISS: Uh --

5 S. PARKER: Go ahead with your question.

6 WEISS: -- Madam -- yeah, Madam Chair, I -- I -- I  
7 understand what, uh, Member Davies is -- is -- is trying to  
8 say. But we don't have a statute in front of us that -- that  
9 tells us one way or the other, if that's something that should  
10 be considered. Um, so my recommendation would be, it's not  
11 something before this committee right now, and we shouldn't  
12 take it under consideration.

13 BAUER: Ms. Chair, this is Jennifer.

14 S. PARKER: Yes?

15 BAUER: I don't -- I -- so thank you for your advice,  
16 um, DAG, but I -- I don't know that double jeopardy applies to  
17 the rule or the decisions made by this committee. Um, and I  
18 also don't know that I necessarily see it as double jeopardy.  
19 Um, I think double jeopardy is -- is a much, um, more involved  
20 in a much more serious allegation than what I believe has  
21 occurred. Um, what I believe occurred, was a procedural error  
22 by the agency that, um, was corrected by not issuing a severe  
23 form of discipline to the agency, by not suspending the  
24 employee. However, a procedural error should not set aside a  
25 requirement to issue discipline or consistency in accordance

1 with prohibitions of penalties. I mean, we'd all be doing  
2 really well if we didn't have to be held accountable, because  
3 procedural errors negated every -- every level of  
4 accountability. I mean, I'd -- I'd be doing great myself. Um,  
5 so I get your concern, Gwyn, but I just don't think that, um,  
6 that situation is applicable here. I think the procedural  
7 error should not negate issuance of some form of corrective  
8 action for the egregiousness of the collision, where it  
9 involved a member of the public.

10 S. PARKER: Thank you. You helped clarify something  
11 else by saying that. Member Scott, do you have anything? Yes?

12 SCOTT: Thank you, (inaudible). This is Mary Jo Scott.  
13 There's, yeah, there's just a lot going on. I agree. Um,  
14 pretty much with everything that Jennifer, committee member  
15 Jennifer said. I just wanted to state that it is the  
16 appointing authorities' right to issue discipline. And we  
17 don't see that if the, um, EMC's authority necessarily, um,  
18 put (inaudible) in place of the appointing authority to, um,  
19 render a decision on the level of discipline, and are looking  
20 for that, uh, NRS, and I'm thinking it was 21020, but I -- I  
21 couldn't find it. But --

22 S. PARKER: Twenty-one.

23 SCOTT: -- going back, in the sense of what the  
24 timeline is for investigation, it is 20 -- or 90 days, and  
25 then the governor can grant an extension. But that is just for

1 suspensions, demotions and terminations. And it has -- it  
2 doesn't reflect a written reprimand. And the appointing  
3 authority does have the right to issue a written reprimand.  
4 And even if there was a procedural, uh, misstep, they can --  
5 the appointing authority does have the right to look at that  
6 documentation. If the appointing authority didn't find  
7 (inaudible), then they can't take that documentation back and  
8 reflect on that documentation and say, you know what? We're  
9 gonna look at this. We're gonna look at the documentation that  
10 we have. We're gonna pull that back. But the incident still  
11 occurred. We're not negating that that incident occurred, that  
12 accident occurred. The grievant even agrees with that. They're  
13 saying they're not disagreed with the content of the written  
14 reprimand, it's just the application of how it was delivered.  
15 They're not disagreeing with that. So they pulled the  
16 application of how that initially was handled, which was the  
17 suspension. And the two supervisor, supervisor, supervisor all  
18 initially agreed that they wanted the suspension, because  
19 that's what the prohibition and penalties actually asked for.  
20 So they pulled that back and delivered the written reprimand,  
21 which was less severe than what the prohibition and penalties  
22 basically asked for. And so I guess I'm a little confused with  
23 what the grievant is really asking for, because he's -- Mr.  
24 Santiago, you're asking for a comparison with, I perceive as  
25 apples and oranges, because one is on the public highway, one

1 is in, excuse me, in the yard, and they're based on the  
2 physicality of a truck backing and knocking a ladder off. And  
3 one is based on the way the P&P is written. It's the awareness  
4 of your personal vehicle backing into a public vehicle. So I -  
5 - I really see that as, if you look at the P&P, B-8, I believe  
6 it's not -- it's not even reprimanding these for a willful act  
7 of destruction. It's reprimanding for willful or a careless  
8 act. And so it's just being cognizant of your surroundings,  
9 cognizant -- are you moving forward or backwards? And so I  
10 think we're kind of getting in the mud or quicksand. Um, is it  
11 the reprimand of the other individual, reprimand of you? And  
12 we're comparing, again, apples and oranges, because you agreed  
13 that the content of the reprimand was just that we are --  
14 we're -- we're kind of doing, um, we we're arguing just how it  
15 was delivered and why it was delivered. And -- and I think  
16 we're just getting really lost. But, thank you very much.

17 S. PARKER: Thank you. All right. I think we all went.  
18 So I'll entertain motion.

19 BAUER: Ms. Chair, this is Jennifer.

20 S. PARKER: Yes.

21 BAUER: I move to deny grievance number 7085, based on  
22 a lack of preponderance of evidence that the employer violated  
23 applicable law, regulation, or policy.

24 S. PARKER: Okay. Got a motion.

25 SCOTT: I second that motion. This is, Mary Jo Scott.

1 S. PARKER: Thank you. Okay. Any discussion?

2 DAVIES: --Just those points that I ha -- this is Gwyn  
3 -- just those points I stated before. I believe that the  
4 appointing authority shouldn't have signed the second  
5 reprimand. Uh, I move we go to vote. What did you say it, to  
6 subside (phonetic)?

7 DAVIES: I -- I'm just restating the objections that I  
8 stated beforehand, and saying that we should go to a vote.

9 S. PARKER: Okay. All those in favor?

10 BAUER: This is Jennifer Bauer. Aye.

11 SCOTT: Aye. Mary Joe Scott.

12 S. PARKER: I am gonna say nay.

13 DAVIES: I, (inaudible) Davies, also state a nay.

14 S. PARKER: (Inaudible). So yeah -- so that -- what  
15 that means is that the grievance is not granted. Um, yes. Oh,  
16 no. Huh?

17 UNIDENTIFIED: That's just granted.

18 S. PARKER: No, we have a tie.

19 UNIDENTIFIED: (Inaudible) need to ask the DAG  
20 (inaudible).

21 S. PARKER: So in a tied vote is, uh, the grievance  
22 granted or denied?

23 WEISS: So in this situation, given that the grievance  
24 is the burden of the employee to prove, if there is a 2-2 tie,  
25 uh, the employee has not met his burden and the grievance

1 should be denied, as a result.

2 S. PARKER: Right. All right. Thank you. Okay. So, um,  
3 we thank you for bringing your case and presenting. And sorry  
4 during the time that it -- the delays that we've had. But, um,  
5 you will receive a decision of -- a written decision in 45  
6 days, is what that means. So we'll go ahead and move ahead.  
7 And you're excused. Thank you again.

8 SANTIAGO: Thank you, guys, for your time. Appreciate it.

9 S. PARKER: Appreciate it.

10 C. PARKER: Thank -- thank you Madam Chair. and the  
11 committee.

12 S. PARKER: Thank you so much. So, um, (inaudible)  
13 we're not gonna get a (inaudible) time for (inaudible). Yeah.  
14 So, what, um, due to the fact that it's already three o'clock,  
15 we have another hearing, we're gonna go -- in the interest of  
16 time, we're gonna go ahead and move forward. We will not be  
17 able to take a lunch. So we're gonna go ahead and get started.  
18 Do we have the party across -- no, not really.

19 UNIDENTIFIED: Is it (inaudible)?

20 S. PARKER: Okay. Five minute break. And in the  
21 meantime, if -- if the parties are here, in Northern Nevada,  
22 can you move up to the front row, please? Thank you. I  
23 appreciate that. At --

24 DAVIES: 3:05?

25 S. PARKER: (Inaudible) five minutes. You don't have

1 to do it right now.

2 DAVIES: We're coming back at 3:05?

3 S. PARKER: At 3:05. Not -- not after, please.

4 DAVIES: Yes, ma'am.

5 S. PARKER: Thank you. So I think we're all here.

6 Okay, if I start again. So we're moving on to agenda item  
7 number 8. Quit -- or I'm sorry. I'm sorry, it's number 9. It's  
8 a grievance of Joshua Farrow, number 7360, in Department of  
9 Tran -- Taxation. I know you've heard my whole spiel, that you  
10 guys have been here, but, um, we're compliant. We did all  
11 that, evacuation, you guys have been here on morning. But  
12 we're gonna go ahead and start with acceptance of the packets.  
13 Do we have any issues with the acceptance of -- we -- I think  
14 we only have one set of packets, which is from the agency --  
15 employer's packet. We did not get a packet from Mr. Farrow,  
16 correct?

17 UNIDENTIFIED: That's correct.

18 UNIDENTIFIED: (Inaudible).

19 S. PARKER: Are you okay with the -- answering on  
20 this?

21 UNIDENTIFIED: Yes, (inaudible). By the time that I got a  
22 reminder email about the packet, it was on Friday the 20th, I  
23 believe. And she sent the email after I had left for the day,  
24 so I wasn't able to request an extension, so. It is what it  
25 is.

1 S. PARKER: Okay. You're good. And, um, so obviously  
2 you have no exact -- there's no (inaudible) to object to. Then  
3 we're gonna go ahead and -- I know we're tight on time, so we  
4 probably are gonna stick to our -- 'cause there's no  
5 procedural issues up on the front end. Each party will be  
6 allowed, uh, one hour at the discretion of myself, to present  
7 his or her matter. So I may hurry this along so that we can  
8 get out of here in a time (inaudible). Um, committee members  
9 may ask questions during any of the phases to ensure they  
10 understand the presentations. At the conclusion, each grievan  
11 -- of -- of the grievance, the committee will deliberate and  
12 take a vote. During deliberation, the parties may not  
13 participate or provide additional information, unless  
14 questioned by the committee. A written decision will be  
15 provided within 45 days. And so I'm gonna reiterate that we  
16 have to, you know, before we -- each time we speak, um, that  
17 we're going to have to announce who we are. And that's for  
18 transcription of the minutes. Okay? Um, so first I'm gonna,  
19 um, let's see. So Mr. Farrow, I'm gonna go ahead and swear you  
20 in. And so, --and do you have any witnesses?

21 UNIDENTIFIED: Yes.

22 S. PARKER: And the -- are you the witness? Who's the  
23 witness?

24 UNIDENTIFIED: Um, Melanie (inaudible) --

25 S. PARKER: You're the witness.

1 UNIDENTIFIED: -- and Carrie Hughes (phonetic).

2 S. PARKER: Okay. And so I'm gonna go ahead and swear  
3 you both in. So each time, I'm gonna ask you to, um, I'm gonna  
4 ask you the question, then you're gonna state your full name  
5 and slowly and clearly, up towards the ceiling of the -- the  
6 room so that the recording can pick up, um, for transcription  
7 purposes. So if you swear to tell the truth, the whole truth,  
8 and nothing but the truth.

9 HUGHES: Karen Hughes (phonetic). Yes.

10 FARROW: Joshua Farrow. Yes.

11 S. PARKER: Awesome. Thank you.

12 UNIDENTIFIED: You are a witness.

13 S. PARKER: (Inaudible), too. And so your -- your name  
14 and answer?

15 YOUNG: Melanie Young. And Yes.

16 S. PARKER: Thank you. Sorry. Okay, so we'll go ahead  
17 and start with opening statements. So, um, that starts with  
18 the employee. If you'd like to go ahead and make your opening  
19 statement?

20 FARROW: Okay. Good afternoon, everyone. I just wanna  
21 start off by thanking everyone for the chance to be here today  
22 to present my grievance. I am currently working in the Nevada  
23 Department of Taxation, where I've worked my entire career  
24 with the State. I have worked, off and on, for this agency  
25 since August of 2007. During my time with the State, I have

1 had, along with other state employees, had to endure several  
2 times where the State has requested its employees to take  
3 furloughs. As such, I and other employees have been forced to  
4 carry the State's financial burdens on our backs. Not only has  
5 this affected State employees, but it has also affected our  
6 families. As much as we do not like them, we have continued to  
7 take the furloughs when instructed to do so, and we have  
8 continued to do our jobs. However, during this whole pandemic,  
9 furloughs were different. The whole -- whole world is  
10 different. On July 14th, 2020, our director of the department  
11 at the time, Melanie Young, sent out an email with two  
12 attachments. In those attachments were a furlough policy for  
13 the department, and a memorandum from Peter Long (phonetic),  
14 who is the division of Human Resource -- is with the Division  
15 of Human Resource Management. In the furlough policy sent by  
16 Ms. Young, it states on page 4, under policy acknowledgement,  
17 and I quote, "all employees within the Department of Taxation  
18 are required to sign the furlough policy, which indicates that  
19 they have read and understand the conditions within. Any  
20 employee who refuses to sign the policy may be subject to  
21 disciplinary action." I do not know about you, but I and other  
22 employees of the department view this verbiage as a threat.  
23 And to be quite honest, I'm sick and tired of the constant  
24 threats. It seems like --

25 S. PARKER: I'm sorry?

1 UNIDENTIFIED: Chair. I'm so sorry. Chair Parker. Uh --

2 S. PARKER: Oh --

3 UNIDENTIFIED: -- we just lost the internet.

4 S. PARKER: Thank you. I'm sorry.

5 FARROW: It's okay.

6 S. PARKER: So --

7 UNIDENTIFIED: Sorry. I need to reconnect.

8 S. PARKER: Okay.

9 UNIDENTIFIED: I can take a few minutes.

10 S. PARKER: Um, it's just gonna take a couple minutes.

11 Uh, we've gotta reconnect with, uh, Member Scott. We don't  
12 have a quorum. Okay, we'll go ahead and, um, resume. So I'm  
13 sorry.

14 SCOTT: You can hear me?

15 S. PARKER: Yes.

16 SCOTT: Okay. Good. Sorry. I'll stop.

17 S. PARKER: Okay.

18 FARROW: It seems like so much of the emails that we get  
19 from our -- from upper management anymore are always  
20 threatening. If you do not do this, you will be subject to  
21 disciplinary action. If you do not do that, you'll be subject  
22 to disciplinary action. I do not think management realizes  
23 what a toll that saying things like this has on our morale,  
24 especially where I work. So with that being said, I felt  
25 forced to sign the furlough policy sent out by Ms. Young. My

1 supervisor at the time told the supervisors in the room, aside  
2 (phonetic), and informed us that we would need to start taking  
3 our furloughs immediately due to upper management, not wanting  
4 everyone taking them all at the same time at the end of the  
5 month. I, to a point, understand that the department needs to  
6 have coverage. However, there have been times where the  
7 department has closed, due to COVID, and there was no  
8 coverage. What difference would it -- would it have made if  
9 the majority of the department, because not all employees  
10 would take their furloughs on the exact same day, at the exact  
11 same time, at the end of the month, when it was guaranteed  
12 that we would need to take them. Instead, the department --  
13 and I -- and I am sure other departments jumped the gun, so to  
14 speak, and forced us to start taking on furloughs immediately.  
15 After I had already taken my furlough, because I felt forced  
16 to, my supervisor sent out an email stating that, as you may,  
17 and I quote, "as you may have heard, the special session is  
18 over and there are some adjustments to the information  
19 previously given. Furloughs have been reduced from 12 a year,  
20 96 hours, to six a year, 48 hours. They will now start in  
21 January 2021 through June 2021. If you took furlough hours  
22 since July 1st, you will have to swap it out with annual  
23 leave. I know this isn't ideal, however, waiting until session  
24 was over, possibly even later in the month, would not have  
25 allowed for us all to take the furlough date and still have

1 enough staff in the office. If you don't have enough time, it  
2 -- if you don't have enough leave, please come see me," end  
3 quote. My question to you all is, why should I and other  
4 employees be punished for doing what we were instructed to do?  
5 Why should I have to use my own personal time to cover for our  
6 director's mistake? In that same pol -- furlough policy, it  
7 states under Section 5, procedures, sentence number one, a  
8 full-time employee, unless exempted by the Board of Examiners,  
9 is required to take at least eight hours of unpaid, furlough  
10 leave per month, and a total of 96 hours of furlough leave in  
11 each fiscal year. Nowhere in there does it state that we had  
12 to start taking our furloughs immediately. Had the special  
13 session at the time deemed that we needed to take all of that  
14 furlough time, and it was guaranteed that we had to take it,  
15 why couldn't we have doubled it up in August or spread that  
16 furloughed time for July out somehow? As long as all employees  
17 took the appropriate, required amount of furlough time in that  
18 fiscal year, what would hit -- what would it have mattered?  
19 Instead, I and other employees were punished for doing what we  
20 were told to do, and we were forced to take our own personal  
21 time. And upper management, especially Ms. Young, does not  
22 seem to care. This is wrong on so many levels. I'm not only  
23 fighting for my time, but for other employees in the  
24 department, including my own staff. I trust that this panel  
25 will understand my concerns and frustration and make the right

1 choice.

2 S. PARKER: Thank you. Thank you, Mr. Farrow. And so,  
3 um, the opening statement. (Inaudible) just state your name  
4 first and --

5 HUDSON: Yes. Thank you, Madam Chair. My name is  
6 Genevieve Hudson, uh, personnel officer for Agency HR  
7 Services, which is the HR office for the Department of  
8 Taxation. Um, in grievance number 2360, Mr. Farrow is grieving  
9 that he was instructed to take furlough leave in the month of  
10 July 2020, prior to the requirement by the legislature and the  
11 governor of -- of the state. Employees -- sorry -- and the  
12 governor -- employees to take furlough leave, becoming --  
13 before they became approved. Mr. Farrow complied with the  
14 instructions provided by his leadership to schedule and take  
15 furlough leave within the month of July 2020, voluntarily.  
16 After Mr. Farrow took eight hours of furlough leave, the  
17 requirement to take furlough leave was approved to start in  
18 January 2021. Therefore, no furlough leave was required to be  
19 taken in July of 2020. The Department of Taxation leadership  
20 followed the guidance of the Governor's office and the  
21 Department of Administration by requiring employees to  
22 preemptively use furlough leave in the month of July 2020. The  
23 Department of Taxation also followed the direction of the  
24 Department of -- of Administration by not allowing employees  
25 to use paid, administrative leave to replace the furlough

1 leave that employee used in the month of July 2020. The EMC  
2 does not have the authority to approve paid, administrative  
3 leave that is not authorized within NAC 284.589. Therefore,  
4 this is simply not a resolution that can be provided by the  
5 EMC. Mr. Farrow's grievance must be denied. Thank you.

6 S. PARKER: Thanks. Any questions before I move  
7 forward? Um, next we're gonna go ahead and have the full  
8 presentation, um, by the employee, with your case. And, um,  
9 again, you know, try not to be redundant, but present your  
10 full case. Um, and then the agency will, uh, be able to cross  
11 examine and question you. Then, we'll move to them to present  
12 their case, where you can cross examine or ask questions with  
13 them. Thank you.

14 FARROW: So basically, I felt as though I had to take my  
15 furlough, in accordance with the guidance provided by Ms.  
16 Young and my supervisor, since they didn't want everyone  
17 taking their furlough all at the same time. (Inaudible) then,  
18 I did voluntarily take my furlough at that time, because I  
19 believed that it was being forced upon us to take them. So I  
20 went -- got it outta the way so that my employees could have  
21 more of a choice on when they were going to take theirs and  
22 whatnot. Um, the fact the matter is, is I felt forced, um, to  
23 take it. I believe that there should have been some resolution  
24 to -- prior to this, such as flexing for that time or admin --  
25 granting admin time, instead of forcing me and other employees

1 to take our own, personal time, when it was on their direction  
2 to start taking that furlough time, in the beginning --  
3 beginning.

4 S. PARKER: And just, let me know when you're done.

5 FARROW: I'm done.

6 S. PARKER: Okay. I can't tell with our masks on, so  
7 (inaudible) --

8 FARROW: No, I can't, either. I'm sorry.

9 S. PARKER: Alrighty. So would you like to examine, or  
10 cross Mr. Farrell.

11 HUDSON: Genevieve Hudson, for the record. Um, so Mr.  
12 Farrell, did anyone actually force you to take a furlough in  
13 July of 2020?

14 FARROW: No.

15 HUDSON: Um, you identified a concern, and this is in  
16 relation to, uh, the employer's Exhibit A-2, um, you exhibited  
17 concern, all right, you identified concern with the furlough  
18 policy, which acknowledges a read and understand in the  
19 policy. And that's on page 4 of 4, in exhibit A-2. Um, the  
20 policy states that, um, all employees within Department of  
21 Taxation are required to sign the furlough policy, which  
22 indicates that they have read and understand the conditions.  
23 So by being issued this policy, are you not, uh, reading and  
24 understanding the conditions within the policy?

25 FARROW: I -- to my understanding, at the time, was that

1 we were supposed to take furlough.

2 HUDSON: But you said you, um, were concerned with the  
3 refusal to sign the policy, being subject to disciplinary  
4 action.

5 FARROW: Yeah.

6 HUDSON: So if you didn't sign the policy, because you  
7 weren't going to read and understand the policy, is that where  
8 your concern was?

9 FARROW: No. My concern is if I don't sign -- read,  
10 sign, and go along with the furlough policy, that I would be  
11 subject to disciplinary action. So if I, basically did not --  
12 if I, basically didn't agree to take a furlough, I'd be  
13 subject to disciplinary action.

14 HUDSON: Okay. Um, throughout the grievance, you state  
15 that requiring employees to use annual leave to replace the  
16 use of furlough is, and I'm gonna quote a couple different  
17 places here, unfair and unethical, just your opinion, and you  
18 don't feel like employees should be held accountable for these  
19 decisions. Do you have any rules, regulations, policies or  
20 procedures to defend your thoughts and feelings that you  
21 expressed in the grievance? And if so, what are they?

22 FARROW: Not off the top of my head, no. Okay.

23 HUDSON: Okay. Um, since your proposed resolution is to  
24 grant administrative leave, paid administrative leave, um, is  
25 -- has not been identified as permissible, uh, what would your

1 other proposed resolution be with this grievance?

2 FARROW: Like I stated earlier, to allow us to flex for  
3 that time that we took off, or some other justification, or  
4 allow us, when furloughs were mandated, to not take a furlough  
5 at that time, because I had already, previously taken it. But  
6 instead, I was required to take the full amount of furloughs,  
7 once they were signed in. And I'm required, now, to take --  
8 use my own annual time for this instance.

9 HUDSON: Are you aware that flex time must be used and  
10 accrued in the same work week?

11 FARROW: Yes. On a typical basis, yes.

12 HUDSON: What do you mean by typical basis?

13 FARROW: Well, like I stated, none of this whole COVID  
14 um, furlough special session has been typical. So when you're  
15 requesting somebody to take -- start taking furlough and then  
16 you come back and say, no, you're not -- you don't have to  
17 take furlough, but you do have to take your own time for that.  
18 That is a different -- it's not normal.

19 HUDSON: But again, for the record, you identified that  
20 that was not required of you to take the furlough leave. And  
21 has there been other policies or procedures that have been not  
22 adhered to during the COVID time period?

23 FARROW: Such as what policies?

24 HUDSON: That's what I'm asking you, sir.

25 S. PARKER: So, yeah, she's asking you for

1 clarification --

2 HUDSON: Well, I --

3 S. PARKER: -- on your question, that's all.

4 HUDSON: Thank you, Madam Chair. Sorry. Uh, this is  
5 Genevieve Hudson. So, um, you state that, during a normal time  
6 period, policies and procedures and rules and regulations are  
7 followed, but during COVID they weren't. So I'm trying to  
8 understand what other policies, procedures, rules, regulations  
9 were not followed during the COVID time period.

10 FARROW: I just believe that, since COVID is so unknown,  
11 that things aren't being as followed as they typically  
12 normally would be during, like, a normal, like three years  
13 ago, is basically what I'm saying.

14 HUDSON: Okay. I don't have any further questions. Thank  
15 you.

16 S. PARKER: Thank you. Alrighty. So A&C, you, um, you  
17 can go ahead and make your full presentation. And, uh, then,  
18 Mr. Farrell can cross examine and ask you questions, as well.

19 HUDSON: Thank you Madam Chair.

20 S. PARKER: Oh, wait a minute. Stop. Yes, let me ask  
21 members if they have questions real quick. I'm sorry. All  
22 right. Uh, members, do you have any questions for Mr. Farrow  
23 at this point, for any clarifications? Yes, Co-chair Davies?

24 Davies: Uh, I'm -- I'm just a little confused. Uh, Mr.  
25 Farrow. You -- you took a day -- you -- you were absent, uh,

1 rather you were present at work, worked a day, but you were  
2 not paid for that day. That's a -- that's a furlough day,  
3 right?

4 FARROW: No.

5 DAVIES: Sorry. You took a day, you weren't present for  
6 work, and that was unpaid. That's a furlough day. I -- I  
7 misstated myself.

8 FARROW: Yes.

9 DAVIES: So I apologize for the -- it -- it -- this --  
10 this day that you took as furlough, when you were not -- when  
11 you were absent from work, was it approved by your supervisor?

12 FARROW: Yes.

13 DAVIES: Your supervisor didn't call you and say, why  
14 aren't you at work? Please come into work.

15 FARROW: No.

16 DAVIES: So your cons -- your supervisor consented to  
17 the absence?

18 FARROW: Yes. It was already pre-scheduled.

19 DAVIES: As a furlough?

20 FARROW: Yes. So, to make sure --

21 DAVIES: (Inaudible) furlough (inaudible) --

22 FARROW: -- to make sure that there was sufficient  
23 coverage in the office.

24 DAVIES: Yet your supervisor was not aware of any  
25 mandate for furloughs at that time?

1 FARROW: Not to my knowledge.

2 DAVIES: So you're -- not to your knowledge. Okay. So  
3 why did you take the furlough?

4 FARROW: Part -- due to this furlough policy that was  
5 sent by Ms. Young.

6 DAVIES: So you're --

7 FARROW: Stating (inaudible) --

8 DAVIES: -- senior management provided the -- you were  
9 saying?

10 FARROW: -- stating that we needed to start taking our  
11 furloughs in the -- for the month of July. And by that time,  
12 we had only -- what? -- a week or two left of July. So we  
13 started -- I started taking my furloughs, because I felt like  
14 I was supposed to. That's what was being (inaudible) --

15 DAVIES: And your management didn't correct that?

16 FARROW: No.

17 DAVIES: At what point were you made aware that it was  
18 corrected?

19 FARROW: Uh --

20 DAVIES: (Inaudible) correction, rather?

21 FARROW: I believe on --

22 DAVIES: Let me simplify my question, sir.

23 FARROW: Yeah.

24 DAVIES: Was it -- were -- you took a furlough day. Were  
25 you notified that that furlough wasn't a furlough, but was, in

1 fact, would have to be -- annual would have to be used before  
2 or after that timecard was submitted?

3 FARROW: I believe it was, uh, after.

4 DAVIES: Afterwards? All right. Uh, no further questions  
5 from me. Thank you.

6 S. PARKER: Thank you. Member Scott.

7 SCOTT: Thank you. I don't have a question at this  
8 time.

9 S. PARKER: Thank you.

10 BAUER: Ms. Chair, this is Jennifer.

11 S. PARKER: Yes.

12 BAUER: Um, I'm -- I'm looking, again, through the  
13 employer's packet. Um, can you help me with anything, either  
14 in the employer's packet or anything, um, that I can use for  
15 reliance upon how you were given the indication that you had  
16 to take the furlough in July?

17 FARROW: Our supervisor pulled -- so I'm a supervisor.  
18 And my supervisor pulled the rest of the supervisors in the  
19 room and stated that, per this furlough policy, we needed to  
20 start scheduling our furloughs in accordance, so that there  
21 would be sufficient coverage in the office. So it was shortly  
22 -- it was probably the same day, shortly after that, it went  
23 out. And then it was on, um, Monday, July 20th is when I got  
24 the email from my supervisor stating that we would have to  
25 swap out our annual leave for that furlough, which is exhibit

1 A-4.

2 BAUER: So to be clear, um, there was nothing in  
3 writing sent out?

4 FARROW: No.

5 BAUER: You were just told by your supervisor during,  
6 like, an all-supervisor type staff meeting or something like  
7 that?

8 FARROW: Well, it -- to a point. She just pulled us all  
9 aside and told us that we needed to start taking our  
10 furloughs. And have our staff start scheduling our furloughs.

11 BAUER: Okay. Thank you.

12 S. PARKER: Thank you. And, um, this is Stephanie  
13 Parker for the record. I do have one question. Do you recall  
14 what the day it was that you actually took this furlough in  
15 July?

16 FARROW: It's on my time sheet.

17 S. PARKER: I -- I just need -- okay. I probably  
18 didn't get down that far. Thank you so much.

19 SCOTT: Madam chair, this is Mary Jim Scott. Um, on  
20 exhibit A-1, is this the, um, email from Melanie Young that is  
21 requesting that they take furlough policy, or furloughs, and  
22 the policy was attached? Is this what is being referenced?

23 S. PARKER: Um, good question. Yeah, 'cause I see two  
24 different things. Both of you responded (inaudible).

25 HUDSON: Yes, Madam Chair. This is Genevieve Hudson. Um,

1 yes, the -- A-1 is the email from Executive Director Young to  
2 staff. Um, and it does say to everyone. Attached was the  
3 furlough policy, which is exhibit A-2. Um, also attached was  
4 the HR 4320, which is exhibit A-3, and was the furlough  
5 guidance from the division of Human Resource Management  
6 Administrator, Peter Long.

7 SCOTT: Thank you.

8 S. PARKER: Were you getting ready to raise your hand,  
9 Co-chair Davies?

10 DAVIES: Yes. Um --

11 S. PARKER: Okay. I --

12 DAVIES: Jennifer asked -- Jennifer asked the question,  
13 which I have to follow up on, 'cause she always has a habit of  
14 asking a question that makes me wanna ask another one. Mr.  
15 Farrow, you, uh, thanks to Jennifer's questioning, you said  
16 you're also a supervisor?

17 FARROW: Yes.

18 DAVIES: Did you advise your staff --

19 FARROW: Yes.

20 DAVIES: -- on furloughs?

21 FARROW: Yes.

22 DAVIES: Did any of your f -- did any of your staff  
23 schedule furloughs and were similarly affected or --

24 FARROW: Yes.

25 DAVIES: So it -- it's -- there was an error -- you're s

1 -- not an error -- there -- there -- you were advised, you  
2 scheduled a furlough, you took a furlough that your staff --  
3 some members of your staff also scheduled furloughs and are  
4 similarly affected?

5 FARROW: Yes.

6 DAVIES: But they didn't file grievances?

7 FARROW: Along with other employees of the department,  
8 as well.

9 DAVIES: Okay. And those -- those employees all, for  
10 want of more delicate phrases, sucked it up and submitted  
11 annual?

12 FARROW: Yes.

13 DAVIES: So they've equally been harmed, if we find in  
14 your case. Okay. Uh, that was my question. Thank you.

15 S. PARKER: Thanks. Okay. We'll go ahead and move to  
16 the agency's, um, presentation of their case.

17 HUDSON: Thank you, Madam Chair. Uh, Genevieve Hudson,  
18 for the record. Um, I will start with my witness, uh, Melanie  
19 Young. So, um, Melanie, um, who gave you -- so this is in  
20 reference to exhibit A-1 one. Um, who gave you and/or the  
21 department the authority to send the July 14th, 2020 email,  
22 asking department employees to volunteer to take furlough  
23 leave? And why did you send the email?

24 YOUNG: Thank you. Melanie Young, for the record. Um,  
25 to talk about Exhibit A-1, which is the furlough policy, the

1 executive team for the Department of Taxation, which  
2 represents each member of each division within the department,  
3 we came together, we read the guidance from the governor's  
4 office. We also read the memo from the Department of  
5 Administration. And we were also anticipating that the special  
6 session would've happened at the end of June. And so the  
7 guidance from the governor's office and the Department of  
8 Administration said start taking furloughs beginning July.  
9 Subsequently, the legislative session, um, was postponed until  
10 later into July. And during this timeframe we were reaching  
11 out to, um, other directors. And I specifically spoke to the  
12 governor's finance office, and asked the question is if --  
13 does the governor have the authority to implement furloughs  
14 without legislative action? Um, and the answer was yes. And so  
15 that told me that, even though the legislature -- and we knew  
16 that the situation was fluid -- that the legislature may  
17 implement something different. And so when we spoke with, um,  
18 the executive team, we started implementing the furlough  
19 policy. Basically what we did was we dusted off the furlough  
20 policy from back in 2009, when everybody was taking furloughs  
21 back then, and just revised it to current terms. And so with  
22 that, um, basically following the governor's guidance, the  
23 Department of Administration's guidance, and taking into  
24 consideration of not only the department employees, um, but  
25 the department's workload, as well. The department is an

1 essential service agency for the State of Nevada collecting  
2 \$7.3 billion a year. We collect 70% of the state general fund  
3 revenues, and that our efforts are, um, vitally important to  
4 the state and local governments and schools. And so with that,  
5 knowing our role within this, um, we felt that implementing  
6 the furlough policy prior to the close of the legislative  
7 session would give, um, benefits to not only the employees,  
8 but the department.

9 S. PARKER: (Inaudible). Continue on all morning  
10 (inaudible).

11 HUDSON: Well, maybe this will, um, lead on with what  
12 you're saying. So prior to sending the July 14th, 2020 email -  
13 - again, exhibit A-1 -- um, did you consider the potential  
14 impacts that may be imposed upon employees and the department  
15 by asking the employees to volunteer to take furlough the  
16 leave in July of 2020?

17 YOUNG: Yes. Thank you, Melanie Young, for the record.  
18 So when, um, on, uh, July 13th, um, the legislative special  
19 session was continuing on, and we met with the department  
20 leadership. So the way we structured that is, the executive  
21 team brought in high level supervisors within the department,  
22 and we discussed implementing the deferral policy and allowed  
23 all the leadership to ask questions. And during that time, we  
24 shared with them that this is still a fluid situation and that  
25 this would be, um, a voluntary basis. We looked at this by

1 implementing the policy at that time, was not only a benefit  
2 to the employees. And what we considered was it would allow  
3 employees to take, maybe, four hours of time and not take a  
4 full eight hour pay cut during that period of time. And again,  
5 this was voluntary. Um, and the employees were instructed at  
6 that time. In the leadership meeting, we shared with them that  
7 any employee who did take the leave would be, um, if there was  
8 something proposed separately from the legislative session,  
9 special session, that, um, there would have to be changes to  
10 the leave that they did take. And so that was discussed. And  
11 from there, the -- the leadership of each section that was in  
12 in that meeting was to take that information back to their  
13 team and share that with them. And I think you can see that  
14 in, um, the response to Mr. Farrow's grievance. If you look  
15 at, um, the response from the supervisor and respondent, um, I  
16 believe it's in step one, page 3, that where, um --

17         DAVIES:     What are we looking at, please?

18         S. PARKER:         Yeah. Wait a minute. Can you tell us  
19 where, uh, which section? Sorry.

20         YOUNG:         Exhibit A, and I believe it's in, um, on page  
21 3.

22         S. PARKER:         Exhibit A, page 3?

23         YOUNG:         I -- I believe (inaudible). And I apologize.

24         S. PARKER:         That's all right. Where the employee, um,  
25 it's on, uh, page 2. So it's at the top of page 2. So they

1 were, um, staff were informed that this was a -- a fluid  
2 situation, and that there could be changes to any time that  
3 was taken.

4 HUDSON: Um, do you believe -- sorry. Genevieve Hudson  
5 for the record. Do you believe that employees could have  
6 potentially have taken the -- the -- the proposed July  
7 furlough, 20 -- July 2020 furlough requirement in August of  
8 2020, instead of taking it in advance, during the month of  
9 July 2020?

10 YOUNG: Thank you. Melanie Young, for the record. Um,  
11 what we looked at, in -- in that regards, um, and why we  
12 implemented the policy when we did, was the governor's  
13 guidance, that basically said that the furloughs were  
14 recommended to be taken in July, and the Department of  
15 Administration's guidance, which said the same thing. But  
16 additionally, the department's workload was considered when we  
17 met with the ex -- executive team. The month of August is a  
18 very busy time for the Department of Taxation. It's commerce  
19 tax filing period, it's quarter roll, and that is a very, very  
20 busy time. So at that point in time, requiring employees to  
21 take, uh, 16 hours of furlough in the month of August would've  
22 severely impacted the, um, department's ability to process  
23 those tax returns and the revenue that's brought in, in the  
24 state. But as well as, if you consider the employee side of  
25 things, um, that would require an employee take, um, a

1 furlough in two separate pay periods, and they would've been  
2 severely impacted, as well. So we took that into  
3 consideration.

4 HUDSON: Genevieve Hudson, for the record. Um, so Mr.  
5 Farrow also identified a concern with the furlough policy.  
6 Again, that's, um, exhibit A-2. Um, in regard to the language  
7 regarding the disciplinary action in prior, um, sorry, that's  
8 on page 4 of Exhibit A-2. Um, and the language regarding the  
9 disciplinary action that could be taken if the employee  
10 refuses to sign the policy. Um, is this, to your recollection,  
11 is this language regarding disciplinary action new in this  
12 version of the policy or was it in the prior policy, as well?

13 YOUNG: Thank you. Melanie Young, for the record. Um,  
14 to my recollection, it was included in a previous policy that  
15 we often -- often update to current terms.

16 HUDSON: Thank you. Genevieve Hudson. Um, do you  
17 remember if, um, Mr. Farrow was an employee the last time that  
18 policy -- the furlough policy was in place?

19 YOUNG: Um --

20 HUDSON: An employee with the department?

21 YOUNG: Melanie Young, for the record. I was not there  
22 at the Department of Taxation, uh, when that policy was  
23 previously implemented. And so I do not know whether he was an  
24 employee at that time.

25 HUDSON: Thank you. And, Genevieve Hudson, um, do other

1 department policies have the same type of language regarding  
2 disciplinary action?

3 YOUNG: Yes. Uh, Melanie Young, for the record. Uh, the  
4 answer to that is yes. And I believe that the employee need to  
5 understand, um, that --

6 DAVIES: Madam Chair?

7 YOUNG: -- their actions.

8 S. PARKER: Uh, hold on a second. Can you hear --

9 DAVIES: I got -- I apolo -- I apologize to all parties  
10 for the interruption. Um, I -- I really appreciate your  
11 testimony. Can you tilt your head just a -- I -- I know you  
12 wanna talk to the lady who's asking you questions.

13 S. PARKER: Oh, remember to (inaudible) --

14 DAVIES: But I'm hearing a little bit of a mouthful due  
15 to my old ears. And I really wanna -- I really want to hear  
16 your answer. I apologize for the interruption.

17 YOUNG: No problem. I --

18 DAVIES: And if -- if counsel -- or could -- if you  
19 could restate your question, get the answer going again. I  
20 apologize. But it's -- there's something to do with that wall  
21 behind you. I'm getting an echo at my end. It's possibly just  
22 an old man, but, you know.

23 HUDSON: No problem. Jenny Hudson -- um Jenny Hudson.  
24 Um, the question is, do other department policies share the  
25 same language regarding disciplinary action?

1           YOUNNG:    And Melanie Young for the record. The answer  
2 is, um, yes to that. It is standard language used throughout a  
3 lot of policies to let employees know that there could be, um,  
4 and I think the term is, there may be disciplinary actions. So  
5 the word is permissive of me.

6           HUDSON:    Thank you. I have no further questions for Ms.  
7 Young.

8           S. PARKER:       Thank you. Okay. And Mr. Farrow, you have  
9 an opportunity to question or redirect, as well.

10          FARROW:    Um, I know you spoke on -- about taking  
11 furloughs in August not being a possibility. However, why  
12 couldn't we have taken our furloughs later, spread 'em out,  
13 you know, four hours here or four hours there? Who -- well,  
14 who's to say that we had to take them all in August? There's  
15 nothing stating that we had to take a certain amount of time  
16 by July or a certain amount of time by August. Um, why  
17 couldn't it have been spread out? And especially with the fact  
18 that it wasn't even a guaranteed thing that we were supposed  
19 to take furloughs.

20          YOUNG:    Thank you, Josh. Melanie Young -- sorry -- for  
21 the record. Um, to answer that question, what we were looking  
22 at, is the governor's guidance. And I believe that's in, um,  
23 exhibit A-5, where, um, he indicates that the employees were  
24 to take furloughs starting on a monthly basis, starting in  
25 July. So I took that, um, as very specific language, that my

1 leadership was going to need to, um, start the furloughs in  
2 July, on a monthly basis.

3 S. PARKER: Okay. Any other questions?

4 FARROW: (Inaudible).

5 S. PARKER: Okay. Thanks. And are you done with your  
6 presentation, then?

7 HUDSON: No. Do --

8 S. PARKER: Oh, okay.

9 HUDSON: No, ma'am. Um, Genevieve Hudson. Did -- I don't  
10 know if you -- if you wanted the committee members --

11 S. PARKER: Committee members, did you have any  
12 questions for the witness?

13 BAUER: Ms. Chair, this is Jennifer. Um, Ms. Young, you  
14 indicated that you consulted the Governor's finance office  
15 about whether the governor had authority to implement  
16 furloughs prior to legislative action. Um, did they give you  
17 any sort of statute or precedent or anything to rely upon,  
18 other than their word?

19 YOUNG: Thank you. Uh, Melanie Young, for the record.  
20 No, it was a conversation with governor's finance office.

21 BAUER: So, um, since then have you learned, or has any  
22 evidence been presented to you that demonstrates the governor  
23 actually has the authority to implement furloughs outside of  
24 legislative action?

25 YOUNG: Thank you. Melanie Young, for the record. No.

1           BAUER:       Thank you.

2           S. PARKER:       Thank you. Member Scott? I think -- I'm  
3 looking around to see is now. Um, do you have any comments or  
4 questions?

5           SCOTT:       I -- I have one request, if, um, everyone can  
6 speak up a little bit. It is difficult to hear. And I just  
7 wanted to clarify. I don't know if I missed it, because I  
8 don't see it necessarily in the policy. Does it require that  
9 they -- that had to take the furlough in July?

10          S. PARKER:       Do you wanna respond?

11          YOUNG:       Yes. Melanie Young, um, for the record, it's,  
12 uh, found in Exhibit A-1, where we are, um, says we will work  
13 to accommodate your furlough request.

14          SCOTT:       (Inaudible).

15          S. PARKER:       If you can speak up? I know this is gonna  
16 be difficult, because you're back here in back of me and then  
17 the microphone that they're trying to talk to you, Las Vegas,  
18 so I apologize for this. I -- I just figured that out.

19          SCOTT:       Okay.

20          S. PARKER:       But, um, yeah, if you can turn to her to  
21 answer that question, or this way.

22          YONG:       Thank you. Melanie Young, for the record. Um,  
23 if I -- I'll apologize. If I recall the question, it was, um,  
24 whether it was required or requested. Um, and it was  
25 requested, um, that they implement furloughs prior to the

1 legislative action, so that we could manage the workload of  
2 the employees. And we also felt that it was giving the  
3 employees a greater benefit. They would have, um, a larger  
4 number of days to choose from. And it was a benefit to them to  
5 be able to do that, instead of us further directing them of  
6 what they could (inaudible).

7 S. PARKER: Were you able to hear that?

8 SCOTT: Yes.

9 S. PARKER: Okay.

10 SCOTT: Okay. Thank you.

11 DAVIES: Me, too.

12 S. PARKER: Okay, great. Thank you, guys. Theresa  
13 (phonetic), is this the microphone right here?

14 THERESA: That's the microphone there.

15 S. PARKER: Or -- no. But I mean -- you know what I'm  
16 saying, right?

17 THERESA: That is an extension of the microphone, and  
18 then it's also pulling in from right here.

19 S. PARKER: But -- so if she's -- if I move this up  
20 when we speak out here, then she'll be able to hear, then Mary  
21 Jo will be able to hear better, or no?

22 THERESA: I am not sure.

23 S. PARKER: Okay.

24 THERESA: (Inaudible).

25 S. PARKER: Okay. I just -- yes.

1 SCOTT: Because I can hear you.

2 S. PARKER: Okay.

3 SCOTT: But I can't hear --

4 S. PARKER: Ms. Young.

5 SCOTT: Yes.

6 S. PARKER: Okay. Thank you.

7 SCOTT: I can hear the two of you really well.

8 S. PARKER: Okay. Thanks.

9 BAUER: Ms. Chair, this is Jennifer. I just thought of  
10 another question.

11 S. PARKER: Okay.

12 BAUER: Or at least (inaudible).

13 UNIDENTIFIED: It's not gonna go any further than this.

14 BAUER: Did the agency -- I -- I see in the packet  
15 that, um, an option for employees who did not have sufficient  
16 leave accruals to replace the furlough used, or the furlough  
17 they've used. I see that, uh, an option was to, um,  
18 essentially work or -- or allow the accruals to make up for  
19 that time, and then once the accruals were in place, um, that  
20 would be swapped out for -- the email that would be swapped  
21 out for the furlough use. Right? So did the agency consider,  
22 um, allowing employees to accrue comp -- comp time,  
23 compensatory time, by working overtime in lieu of using their  
24 already accrued leave?

25 YOUNG: Thank you for the question.

1           BAUER:       Sorry, compound question.

2           YOUNG:       Thank you for the question. Melanie Young, for  
3 the record. Um, for the past, probably, I'm thinking back to  
4 2019 time period, the department was only authorizing  
5 compensatory time for overtime, for (inaudible) time, just due  
6 to budgetary, um, restrictions. And so, um, all employees were  
7 afforded, uh, compensatory time, if they, um, had (inaudible).  
8 And so that would've been an option to choose, to swap out for  
9 the furlough if they had that.

10          BAUER:       One more question, Ms. Chair. Jennifer Bauer,  
11 for the record. Um, did I miss it in the packet? Was that  
12 communicated to the -- the staff? It's possible I missed it.

13          YOUNG:       Um, Melanie Young, for the record. I don't  
14 recall it being in the packet. And then I don't, um, recall  
15 the communication, specifically about that. I know we  
16 specifically offered, um, sick leave, so if they had taken it  
17 for an appointment or things like that, I know that's in here,  
18 but I'm not sure. I believe our HR did not (phonetic) work  
19 with each individual employee who took the furlough time to  
20 switch that out for what they had.

21          BAUER:       Thank you.

22          S. PARKER:       Thanks. I have no other questions. Co-  
23 Chair?

24          HUDSON:       I'm done.

25          S. PARKER:       Okay. Thank you. Any other questions? Co-

1 Chair Davies?

2           DAVIES:    Uh, I just, uh, I wanted to get clarification  
3 on something I -- I believe I heard, uh, director Young, um,  
4 so my understanding -- and please, uh, re-guide me if I'm  
5 wrong, or just, um, correct me. On the June, uh, on June 11th,  
6 2020, uh, the Governor's office issued, uh, this little  
7 missive, uh, that you have in A-5, that you referenced, said,  
8 uh, proposing one furlough day a year -- I'm sorry, one  
9 furlough day a month. And this was the basis of your action?  
10 And -- and this was the founding event that -- that led, uh,  
11 the guidance that you issued to your staff?

12           YOUNG:     Um, Melanie Young again, for the -- the record.  
13 Uh, this wasn't the only guidance or the foundation used  
14 during that time period. The department, at that time period,  
15 was also proposing budgetary reductions that we knew were  
16 going to be going forward to the legislative session. Um, what  
17 I would say is this was a very stressful time for the  
18 executive team, the department, and the state, um, as well as  
19 the employees. And so, um, not only was it this guidance, but  
20 the guidance from the Division of Health or, uh, Human  
21 Resource Management that came out on July 2nd that basically  
22 said, institute your policies. And so we anticipated that  
23 furloughs were -- would be coming. And we got -- founded the  
24 guidance on, um, the governor's office communications that  
25 said, um, initiate them in July, with one furlough day a

1 month.

2           DAVIES:    Thank you. So -- so you're -- you're citing A-5  
3 and A-3 there, saying that, uh, on July 2nd, A-3 was issued  
4 by Peter Long. And then on, uh, sorry, uh, July 11th, A-5 was  
5 sent out by the governor's office. So, uh, basically a notice  
6 from the person who's at the top of your chain of command, and  
7 the person who's alongside him, running HR. And this is --  
8 this was the foundation of the actions that you led to talk to  
9 your, uh, staff.

10          YOUNG:     Yes. Melanie Young, for the record.

11          DAVIES:    I have one other question, 'cause I would like  
12 the answer, uh, just so I'm absolutely sure of the answer.  
13 And, uh, I thank you, uh, Ms. Young. I -- it's not for you.  
14 And, uh, I appreciate the answers you've given me. I'm gonna  
15 jump over real quick, if that's okay, Chair, and ask one  
16 question of Mr. Farrow, which I should have done earlier. That  
17 one question is, how many hours of furlough did you take in  
18 the fiscal year?

19          FARROW:    Which fiscal year?

20          DAVIES:    Uh, '21. Sorry.

21          FARROW:    I took the full amount that I was supposed to  
22 take, which was, uh, 48 hours, not including the additional  
23 time that I had to switch out for my annual.

24          DAVIES:    Okay. So you're saying you took 48 hours of --  
25 or you're saying 48 plus. Um, that's -- you did take -- I -- I

1 guess I'll -- I'll rephrase my question. You took 48 hours of  
2 furlough, which was the six days that was mandated?

3 FARROW: Yes.

4 DAVIES: And you took this additional hour, uh,  
5 additional eight hours that we're discussing now?

6 FARROW: Yes.

7 DAVIES: So 48, 56 then? Is that your answer?

8 FARROW: (Inaudible).

9 DAVIES: Or -- I'm not leading you. No. Um, I withdraw  
10 that last statement. Thank you. I have no further questions.

11 S. PARKER: Thank you. All right. You can go ahead and  
12 proceed, Genevieve.

13 HUDSON: Thank you, Madam Chair. Genevieve Hudson, for  
14 the record. Um, next witness is Carrie Hughes, from the  
15 Division of Human Resource Management, as a subject matter  
16 expert. Thank you. Um, Ms. Hughes, uh, what authority does the  
17 Department of Administration have to send the July 2nd and  
18 July 24th 2020 memorandums that were sent? Those are exhibits  
19 A-3 and A-9.

20 HUGHES: I cannot speak to that authority. They were  
21 authorized. Um, what was that memo date again?

22 HUDSON: July 2nd, 2020, and July 24<sup>th</sup>, 2020. That's HR  
23 number 43-20. And the -- exhibit A-9 does not have an HR  
24 number.

25 HUGHES: Okay. Yeah, I don't have the exhibits. But I do

1 have -- the July 2nd, um, was coming from Peter Long,  
2 Administrator, the Division Resource Management. And you're  
3 talking about the other one, is the July (inaudible).

4 HUDSON: Yes.

5 HUGHES: Um, came from Laura Fried, who is Director of  
6 the Department of Administration. Um, where they got their  
7 authorization to move forward, I can't speak to.

8 HUDSON: Um, do you know why the Department of  
9 Administration sent out the, um, July 2nd, 2020, or July 24<sup>th</sup>,  
10 2020 memorandums?

11 HUGHES: I am not aware of the, uh, where the July 2nd  
12 came from. July 24<sup>th</sup>, um, I was informed of flowing from  
13 (phonetic), uh, the July 2nd memo, and what had happened with  
14 the attorneys (phonetic) between those two events.

15 HUDSON: And what happened in between was the  
16 legislature that (inaudible) the -- in special session  
17 closing?

18 HUGHES: Correct. (Inaudible).

19 HUDSON: Thank you. Um, sorry. Genevieve Hudson, for the  
20 record. I'm reading (inaudible). Um, Ms. Hughes, did the  
21 Department of Administration or the Department of Human  
22 Resource -- Division of Human Resource Management consider the  
23 potential impacts to employees, um, and -- and what might --  
24 regarding what might be imposed by issuing either the July 2nd  
25 or the July 24th memorandums?

1 HUGHES: Uh, Carrie Hughes, for the record. Um, I am not  
2 aware of that. I was not part of those discussions.

3 HUDSON: Okay. Genevieve Hudson. Um, did the department  
4 or division have the authority to not follow the -- the --  
5 sorry -- the Department of Taxation have the authority to not  
6 follow the direction in the July 2nd or the July 24th, 2020,  
7 memorandums, and allow an employee's furlough used to be  
8 changed to administrative leave, paid administrative leave?

9 HUGHES: That issue was specifically addressed in the  
10 July 24th, uh, memorandum that went out from Director Freed.  
11 At the last sentence of the first paragraph, it states  
12 administrative leave cannot be used to replace furlough leave.

13 HUDSON: Thank you. Genevieve Hudson, for the record.  
14 That is, um, in Exhibit A-9. Um, that's all the questions I  
15 have. Thank you.

16 S. PARKER: If you're done (phonetic) with your  
17 presentation, you ready for questions, or?

18 HUDSON: Yes.

19 S. PARKER: Or just with this witness? I'm sorry.

20 HUDSON: For that witness.

21 S. PARKER: Okay.

22 UNIDENTIFIED: (Inaudible).

23 S. PARKER: Yes. Go ahead. You can -- you can -- it's  
24 your turn to cross examine the witness (inaudible). If you  
25 have questions (inaudible).

1 FARROW: Um, considering the fact that furlough wasn't  
2 being required of us, due to -- (inaudible). So at the time it  
3 was just being proposed, right? Right? Am I understanding that  
4 right? It was just being proposed. And so due to that  
5 proposal, I took what I thought was furlough. However, come to  
6 understand, that actually wasn't furlough. Is that correct?

7 HUGHES: Um, Carrie Hughes, for the record. Um, there  
8 was clarification in the July 24th, uh, memo sent out from  
9 Director Freed, that, uh, that furlough that had been taken  
10 was not required, because of the way the special session had  
11 set up furlough, to begin on January 1st, not on July 1st. Uh,  
12 so it was -- furlough was no -- it was not authorized.

13 FARROW: But because it -- it wasn't technically  
14 furlough, because special session wasn't requiring us to take  
15 furlough, wouldn't admin leave cover that time? Because  
16 technically, in all aspects of it, it wasn't furlough.

17 HUGHES: Uh, Carrie Hughes, for the record. Admin, the  
18 administrative leave is not an automatic benefit. Um, there is  
19 a regulation that specifically outlines in what circumstances  
20 it can be used.

21 FARROW: And does those circumstances cover anything of  
22 this nature, where the governor proposes that we take  
23 furlough, even though it's not set in stone?

24 HUGHES: Uh, Nevada administrative code 284.589, which  
25 covers administrative leave, doesn't mention this (inaudible)

1 a situation, no.

2 FARROW: (Inaudible).

3 S. PARKER: Thanks.

4 HUDSON: Uh, I do have one more question, um, of Ms.  
5 Hughes.

6 S. PARKER: Okay.

7 HDSON: Sorry. Genevieve Hudson, for the record. Um, so  
8 Ms. Hughes, are you aware of other departments outside --  
9 other than Department of Taxation, who implemented or  
10 requested, um, their employees to start taking furloughs in  
11 advance of the special session ending?

12 HUGHES: Uh, Carrie Hughes, for the record. I'm aware  
13 that other agencies were discussing it. Whether they went  
14 forward, I can't speak to that.

15 HUDSON: And, um, Genevieve Hudson, for the record. Is  
16 there anything within NAC 284.589, as you just mentioned, um,  
17 that allows -- you said there's -- that doesn't mention that  
18 they can approve. Is there anything that says that they cannot  
19 approve paid administrative leave for anything that is not  
20 identified in 284.589, NAC.

21 HUGHES: Carries Hughes, for the record. Uh, NAC  
22 284.589, uh, specifically addresses situations in which  
23 administrative leave may, or is required to be issued. I'm not  
24 aware of anything stating what you had indicated.

25 HUDSON: Thank you. Okay.

1 S. PARKER: Thank you. Thank you so much. Does any of  
2 the, um, committee members have any questions for the witness?

3 BAUER: Ms. Chair, this is Jennifer.

4 S. PARKER: Yes.

5 BAUER: Take advantage of the subject matter expert,  
6 while we have her. Um, in line with my question of director  
7 Young, um, is there anything that you're aware of, in law,  
8 regular policy that would preclude, um, using comp time or  
9 accruing compensatory time to swap out that furloughed time  
10 taken in July, Instead of swapping with annual?

11 HUGHES: Uh, Carrie Hughes, for the record. Um,  
12 compensatory time is, technically, a different subject matter  
13 expert in the division (inaudible) --

14 BAUER: Oh, man.

15 HUGHES: -- her area. Um, so I can't really speak to  
16 that.

17 BAUER: Okay. Thank you.

18 S. PARKER: Member Scott?

19 SCOTT: I don't have a question at this time. Thank  
20 you.

21 Hudson: Oh, I'm done. Sorry.

22 S. PARKER: Co-chair Davies?

23 DAVIES: Uh, I don't have any questions at this time.  
24 Thank you.

25 S. PARKER: Thank you.

1 HUDSON: And I don't have any questions.

2 S. PARKER: Right. Thank you. Thank you for your time  
3 -- for being here. Um --

4 HUDSON: Genevieve Hudson, for the record. I just  
5 wanted to clarify, um, something that I believe, um, one of  
6 the members mentioned earlier. Um, the exhibit B has, um, Mr.  
7 Farrow's time sheet for, um, pay period three, which is July  
8 13th through July 26th, 2020. Um, it does indicate that Mr.  
9 Farrow swapped out four hours of furlough leave, that had been  
10 pre-approved, um, for four hours of annual leave, not eight  
11 hours, as, um, I believe was mentioned earlier. It does  
12 indicate that another four hours of annual leave was used, but  
13 it only identifies four hours, um, as potentially, as  
14 requested originally as furlough. And, um, that's, I think,  
15 all I have to say at this time. Thank you.

16 DAVIES: Can -- can I get that explained to me again,  
17 please? This is Gwyn, for the record.

18 HUDSON: Yes. This is Genevieve Hudson, um, for the  
19 record. So if you look at exhibit B, um, the note, um, for the  
20 time on July 17th, 2020, it does indicate a total of eight  
21 hours of annual leave for that day. However, the note  
22 indicates using four hours of annual leave, from 7 to 11 AM,  
23 and then it says from 11:30 to 3:30, using four hours of  
24 annual leave, against my will, that was originally four hours  
25 of furlough. Therefore, from my perspective, that indicates

1 that his original furlough request, Mr. Farrow's original  
2 furlough request, was only for four hours of leave that day,  
3 as opposed to the eight hours that was mentioned earlier.

4 FARROW: That's correct.

5 DAVIES: Could I ask --

6 HUGHES: I'm sorry to be interrupting.

7 DAVIES: Oh, okay.

8 HUGHES: But I -- I realize that, in answering one of  
9 the questions, I misstated. If I can revisit?

10 S. PARKER: You -- you can come up here for a minute.  
11 And then just hold on a second. And, Member Davies, I will  
12 allow this. 'Cause we wanna make sure that we have accurate  
13 information. Thank you. Co-chair Davies?

14 DAVIES: I -- I'm just wanting to know if there was  
15 another four hours of furlough that appeared on another time  
16 card, or, uh, another four hours of furlough that, uh, was  
17 submitted for later and not approved.

18 FARROW: No. We're (inaudible) take our time for four  
19 hours.

20 DAVIES: So -- so my question earlier to you was how  
21 much furlough had you taken? And it was the six days that were  
22 mandated, and a half a day, then? Not --

23 FARROW: Yes. That's correct.

24 DAVIES: -- not a whole day.

25 FARROW: Yes. I misspoke it earlier.

1           DAVIES:     Okay. Thank you.

2           S. PARKER:        Are you done?

3           DAVIES:     I am, ma'am. I'm sorry. I apologize. That's  
4 all the questions.

5           S. PARKER:        No, that's all right. Thank you. I just  
6 can't -- I can't see your eyes or anything, so -- 'cause  
7 you're too far away from me. Sorry. So, go ahead, um, Ms.  
8 Hughes. Go ahead and, um, clarify. You said you were gonna  
9 clarify something.

10          HUGHES:     Yes, I apologize to the committee. Um, when I  
11 was asked by Genevieve Hudson, um, whether I was aware of any  
12 other agencies that implemented in July, the furlough, I was  
13 thinking in terms of consulting with other agencies. I forgot  
14 my own. Um, the division of Human Resource Management did  
15 implement. I believe I, uh, myself took furlough that July,  
16 and had to reverse it out. I apologize.

17          S. PARKER:        No, that's all right. We don't always  
18 think about ourselves. Thank you so much. Thanks for  
19 clarifying that.

20          HUDSON:     I have nothing else at this time, Madam Chair,  
21 just the closing.

22          S. PARKER:        Okay. Thank you so much. And any other  
23 questions for, um, Ms. Hudson, from the committee members?  
24 Okay. So we're gonna go ahead and move on to closing  
25 statements. Go ahead and do your closing statements. Keep in

1 mind that, once closing statements are done, we will start  
2 deliberating. Then we will not -- unless we have questions, we  
3 won't accept any information from any of the parties. So, um,  
4 we'll (inaudible).

5 FARROW: So basically, I have been with the state since  
6 2007. So that means I have gone through this whole furlough  
7 process before. Never, in my mind, would I have thought that I  
8 would receive instruction from my supervisor and upper  
9 management to start taking furloughs, just to have that  
10 redacted, and for me to take my own personal time in place of  
11 that. That is why I'm here today to -- to fight for not only  
12 me, but my staff and other employees of the department that  
13 were affected by this. And I understand that Ms. Young was  
14 following guidance that she received. I do not blame Ms. Young  
15 for that. However, I -- I feel that there was no effort to  
16 rectify the situation. Um, I was doing what I was told to do.  
17 I did what I was told to do. And now I am being punished for  
18 it. And I do not feel that that is right, along with other  
19 employees of the department. And I'm done.

20 S. PARKER: Thank you so much. And go ahead, in  
21 closing.

22 HUDSON: Thank you, Madam Chair. Genevieve Hudson, for  
23 the record. Um, committee, as you've heard today and read in  
24 the grievance, number 7360, Mr. Farrow chose to take furlough  
25 leave in the month of July 2020, prior to the requirement by

1 the legislature and the governor for state employees to take  
2 furlough leave becoming approved. Yes, Mr. Furlough -- Mr.  
3 Farrow complied with and understood the request of his  
4 leadership to schedule and take furlough within the month of  
5 July 2020. But the leaders complied with the directions they  
6 received from the governor's office and the Department --  
7 Department of Administration to change any furlough leave use  
8 to annual leave. The Department of Taxation leadership did not  
9 have a choice to offer the use of paid administrative leave to  
10 replace Mr. Farrow's, or any other employee's, use of furlough  
11 leave in the month of July 2020. Neither the Department of  
12 Taxation nor the EMC have the authority to approve paid,  
13 administrative leave that is not authorized within NAC  
14 284.589, nor go against the governor's direction. Therefore,  
15 this is simply not a resolution that can be provided, and Mr.  
16 Farrow's agreements must be denied. Thank you.

17 S. PARKER: Awesome. Thank you so much. Thank you  
18 both. Okay. (Inaudible) go to deliberations? Are you getting  
19 (inaudible) --

20 DAVIES: You said -- you said the D word. Deliberation,  
21 ma'am?

22 S. PARKER: Yeah, I did.

23 DAVIES: Would you like me to start?

24 S. PARKER: Sure.

25 DAVIES: All right. I will take a quick swig. Thank you.

1 Um, uh, this is a timeline thing for me, looking at this right  
2 now. Um, we all -- I -- I -- we all have enough longevity that  
3 we all lived -- worked through this. And quite a few of us  
4 lived and worked through the last one. But -- but just looking  
5 at this, on July the 2nd, Peter Long sent out a missive  
6 advising people. On July the 10th, the governor sent out  
7 missive advising people. On July 17th, Mr. Farrow, with good  
8 and solid guidance from Director Long, based on the missives  
9 and previous experience, took a furlough date. On July 24th,  
10 Mr. Freed issued -- Director Freed, uh, issued an, uh, sorry,  
11 Mr. -- I called him Ms. Freed -- issued a missive that said,  
12 oh no, you can't. And I'm sorry, when you've told -- when  
13 you've thrown a ball and you've told, go out there and play  
14 football, and said, oh no, you can't play football, play --  
15 you're gonna have to play softball. You can't. I have a real  
16 issue that -- that thi -- this is -- this can be cut down to a  
17 manner of dates. And we have evidence here that -- that has  
18 the dates cut and dry. Um, uh, Director Lo, uh, Director Lee  
19 issued in, uh, reacted in -- in good faith. And I don't think  
20 we can hold her or the Department of Taxation, uh, at fault in  
21 any way, shape or form. There's -- there's memos here. Um, and  
22 for the department to come out on the 24th and go, oh no, you  
23 can't play. You can't -- you can't have that, when in good  
24 faith, Mr. Farrow did take that leave on the 23rd. He -- he --  
25 I think we need to find a way that those four hours are

1 somehow -- he's made whole, because he has been made less than  
2 whole. And there ends my deliberation for the moment.

3 S. PARKER: Okay. Thank you. Thank you.

4 BAUER: Ms. Chair. This is Jennifer?

5 S. PARKER: Yes?

6 BAUER: In a roundabout way, I agree with Gwyn's  
7 analogies. Um, I -- I haven't heard or seen evidence that  
8 there was, um, sufficient, statutory regulatory authority to  
9 mandate or implement furloughs before legislative action. Um,  
10 I also am a little cons -- or, actually a lot con -- I'm a lot  
11 concerned -- about, um, what it sends to our valuable  
12 resources in the state of Nevada, our most valuable resource,  
13 which is our -- our -- our staff, our team. I'm concerned  
14 about what message it sends, if we're, not necessarily  
15 punishing the staff, but we are -- are not offering a remedy  
16 for someone complying with a request versus a mandate. Um, I -  
17 - I know as a manager myself, I would rather not have to  
18 mandate every single thing from my team. I would rather, um, I  
19 would rather empower them to choose to comply with a request  
20 versus mandating something. So I'm concerned about, um, the --  
21 the reliance on the argument that, um, Mr. Farrow took the  
22 furlough leave voluntarily. 'Cause thank you for doing that. I  
23 didn't -- I didn't take any furlough in July. Um, so thank  
24 you. But I'm also equally concerned that I don't know that we  
25 can offer -- I actually know for a fact, we can't offer the

1 remedy that you seek, because, um, not surfing on eBay, I  
2 checked the -- the regulation and, um, there isn't a  
3 subsection that allows for the EMC, or any entity in Nevada,  
4 to grant admin leave for this purpose. So I'm kind of torn,  
5 because I see the employer's perspective, I see the employee's  
6 perspective. It's a bum situation, all around. I don't think  
7 we can offer the remedy that is requested in the grievance.  
8 But I -- I agree with, um, my fellow team, uh, committee  
9 member, that I do think that the grievant needs to be made  
10 whole somehow. But I don't know that offering working extra  
11 time, working compensatory time to accrue that comp leave  
12 would remedy the situation. And furthermore, I don't even know  
13 if there's been a change in base rate of pay that would  
14 complicate matters. Like, I -- I'm not sure if the grievant  
15 has the same rate of pay now, that he had at the time he took  
16 the furlough hours, July 17th. So I don't know if that's to  
17 ease the issue anymore or not. I'm done for now.

18 S. PARKER: Okay. Member Scott.

19 SCOTT: Hi. This is Member Scott. I have the same  
20 concerns. Um, I don't know that we actually, as the committee,  
21 can offer a resolution. I -- I see that, like in the grievance  
22 response from the director, that she does mention that the  
23 decision was based, um, that it was based on a bad decision,  
24 and that the policy was (inaudible) furlough. So I think,  
25 basically, that there should be some type of resolution for

1 the furloughs that we're taking, to June (phonetic). And I --  
2 I don't know that -- what -- what that would be, that we could  
3 offer. I don't know if it's possibly (inaudible) time. I don't  
4 know that there's anything in regulations that we could do.

5 S. PARKER: What -- which one did you --

6 SCOTT: So I'm -- I'm kind of on the fence about it,  
7 unfortunately.

8 YOUNG: This is Genevieve Hudson. Did you have a  
9 question?

10 S. PARKER: Yeah, I -- I just wanted to ask you. What  
11 statute did you look at that says we don't have authority  
12 (inaudible).

13 YOUNG: I looked at the -- cited Nevada administrative  
14 Code (inaudible) 589. And as, um, the fabulous Denise  
15 (inaudible) Seymour (phonetic) always encourages me -- did  
16 we lose Mary?

17 S. PARKER: We lost Las Vegas.

18 UNIDENTIFIED: Well that, too. There's no power right  
19 here. You just -- it was raining earlier. Yeah, it was. I  
20 guess I was just looking that way. But it sounds like it's  
21 this way. We lost electricity. Yeah, we just lost electricity.  
22 All right. So we'll go ahead and continue. All right. So you  
23 had just finished, I think Mary Jo, right?

24 BAUER: I think it was actually me and it was my fault,  
25 'cause I was complimenting the Denise (inaudible) Seymore. Um,

1 and I was saying that, um, to answer your question -- this is  
2 Jennifer Bauer, for the record -- to answer your question, Ms.  
3 Chair, um, I had researched NAC 284.589, and there have been  
4 some updates that may or may not be codified on the  
5 legislative website. So I always go, pursuant to Denise's  
6 guidance, to the hr.nv.gov website. And, um, I didn't see  
7 anything there that allows for, um, any entity in Nevada to  
8 permissively allow for admin leave in this situation. Does  
9 that answer your question?

10 S. PARKER: Yes. Can you -- can you tell me where you  
11 looked that -- I wanna look at what you were looking at,  
12 though.

13 BAUER: Yes, hr.nv.gov, on the main website.

14 S. PARKER: Okay, let me get there real quick. Yeah.

15 BAUER: On the main page, there's a link to  
16 regulations. And it's a PDF document. But it is always updated  
17 with the most recent, approved regulatory changes.

18 S. PARKER: Publications, you said?

19 BAUER: No.

20 S. PARKER: What'd you say, first?

21 BAUER: Statutes, regulations. It's on the right hand  
22 side of the (inaudible) --

23 S. PARKER: (Inaudible).

24 BAUER: -- the main page.

25 S. PARKER: There it is. (Inaudible) for -- about 589.

1 I'm a visual person. Yeah, if they -- and the only reason I  
2 wanna see -- I just wanna -- I don't think that -- I -- I  
3 agree with you guys. This is Stephanie Parker, for the record.  
4 I -- I agree with all my fellow members, in that I think the  
5 agency was acting with the best information that they had,  
6 even though it was a proposal and it was not yet mandated. Um,  
7 so I don't think there was mal intent. But I also don't  
8 believe that the employee should be penalized. And I'm not  
9 saying, um -- what was the other term that was used?

10 BAUER: For what?

11 S. PARKER: Uh --

12 BAUER: (Inaudible)?

13 S. PARKER: No. When he suffered, um --

14 BAUER: Injustice?

15 S. PARKER: No, he did suffer an injustice. He suff --  
16 there was another word that was used that --

17 FARROW: Punished:

18 S. PARKER: Oh, punish --

19 DAVIES: (Inaudible).

20 S. PARKER: -- punishment. It was punishment. Thank  
21 you. Thank you.

22 FARROW: You're welcome.

23 S. PARKER: I -- I could see it in my head, but, um, I  
24 -- I think you were harmed. I still think you were harmed. You  
25 weren't punished, per se, but you were -- I believe he was

1 harmed. And there's gotta be a different way to make him  
2 whole. I think he deserves to be made whole. Unfortunately, we  
3 can't act on behalf of somebody else that didn't file  
4 anything. So I -- I appreciate you acknowledging, you know,  
5 other people that -- that may have gone through this. Um, but  
6 there's nothing that we can do about that.

7 DAVIES: We -- Madam Chair?

8 S. PARKER: Yes?

9 DAVIES: We're -- we're -- are we stuck on -- or, uh, is  
10 there any -- this -- this gentleman -- let me clarify my  
11 thoughts. This gentleman has been induced to use four hours of  
12 his annual leave. And that is where he has been made less than  
13 whole.

14 S. PARKER: Right.

15 DAVIES: This is a -- this grievance is about working  
16 hours. Well, no, I guess it's not. It's about compensation.  
17 Because he was told that he would have to go without four  
18 hours of his regular pay. He was -- he was -- and -- and he  
19 took it on the chin like a champ, because he's a good state  
20 worker. He gives a hoot about Nevada, about -- and he knows  
21 that he was here. He saw the evidence last time that the  
22 recovery of Nevada was built on the backs of state workers --  
23 wasn't on the -- built on the backs of anybody else. We  
24 shouldered the bloody load with -- excuse me, I'm getting  
25 emotional. We shouldered the load and we carried the burden

1 with furloughs last time, for multiple years. This time, lo  
2 and behold, with all fairness, the director was advised, from  
3 -- all the way up from the governor, who my chain of command  
4 is just like hers, at the end of the day. It ends at the  
5 governor. So in all fairness, this director and her -- the  
6 depart -- and the department, let's not talk about the  
7 director. The Department of Taxation directed this employee,  
8 who stepped up like a good (inaudible), to do what he had to  
9 do, to move forward, what he was directed to do, moving  
10 forward. And then, it was told, ha ha, big joke, son. You --  
11 good luck. Suck it up buttercup. That's not -- we cannot, in  
12 all sense of fairness, we can't just turn around and say,  
13 well, we can't do anything about admin leave. 'Cause this  
14 isn't about admin leave, this is about compensation. He chose  
15 to use four hours of annual leave to make up for a shortfall,  
16 which he thought, in all fairness, was going to be equitable  
17 across all employees. He stuck his chin out there. And now  
18 we're gonna thump it. I think we have an opportunity to do  
19 something here. There -- I don't know if we can direct --  
20 maybe we should direct the department to return four hours of  
21 annually to him and see if the people up above are willing to  
22 take this to district court. Because -- and it's -- this is a  
23 -- this is a working conditions compensation issue. It's 100%  
24 a grievance. And he has 100% shown his case. And the  
25 department has shown that they acted in good faith, from the

1 ones up -- from guidance received from above. So I am -- I'm -  
2 - I'm quite riled about this. And -- and maybe it's because I  
3 went through the furloughs last time, I went through the  
4 furloughs this time, and I see the injustice here. And we have  
5 -- I -- I think we have to do something, even if we have to  
6 make a decision. And if -- if people object to our decisions  
7 at the next higher level, and they choose to take it to  
8 district court, good on them. But if we don't make a decision,  
9 because we say, oh, we have no authority here, we have no  
10 authority. We have authority. This is about compensation. So I  
11 implore my fellow members, please, let's make a decision, even  
12 if it's a bad one, let them take it up and fight it further  
13 on. 'Cause if we just choose to say, no, we are harming this  
14 gentleman, we are harming other state workers, and we are  
15 setting a precedent that will roll forward. You cannot turn  
16 around and tell someone, I need you to take a furlough, and go  
17 ha-ha, joke's on you. Thank you. Nothing more at this time.

18 S. PARKER: Thank you Co-chair, Davies, I agree with  
19 you. I also have concern, uh, I have -- I agree with you on  
20 that. I have concern with, uh, because I -- I wanna go back to  
21 -- I -- he really was not -- he did not voluntarily take it.  
22 He was asked to sign an agreement that says, every month you  
23 will take time. And on that agreement it says, failure to sign  
24 this. That's what I have real issue with. Failure to sign and  
25 this may result in disciplinary action. Uh, I don't know, is

1 it standard? Is it -- I know it's standard in taxation, I  
2 guess.

3 UNIDENTIFIED: But when you're citing -- to cite  
4 discipline and policies.

5 S. PARKER: It is. I've never had one that says  
6 failure to sign (inaudible).

7 BAUER: Ms. Chair, this is Jennifer Bauer, for the  
8 record.

9 S. PARKER: Thank you.

10 BAUER: Um, still trying to not act as a witness.  
11 However, in my experience as a state employee and as a  
12 manager, um, it is often, um, cited, not necessarily for  
13 compliance, but, um, failure to sign as, um, acknowledgement  
14 of the policy is a way that we ensure everybody has had that  
15 communication of expectations. So just like you, um, just like  
16 an employee has to sign or acknowledge or, um, refuse to sign,  
17 there has to be some sort of acknowledgement on discipline.  
18 There has to be some sort of acknowledgement that the policy  
19 was disseminated to staff, else it didn't occur. If there's  
20 not an acknowledgement, how do you -- how do I prove that you  
21 were given that communication of expectations?

22 S. PARKER: And I would argue that it -- and here's  
23 what I would say to that. Was that the employee covered on it?  
24 And in an email, to send it out with a verbiage that says,  
25 failure to sign this, results in this. But I understand that.

1 Does it mean that I understand that this is really not  
2 mandatory yet, but we're putting it in place, because?

3 BAUER: That's a different --

4 S. PARKER: You know what I'm saying? That -- it's --  
5 I -- I just -- I don't recall (inaudible) any -- any policies  
6 like that. And I probably don't need know. But, um, which is  
7 bad on me. But, um, 'cause I -- I know if somebody's covered  
8 on something, you can actually say they were covered on this  
9 date and they refused to sign. So I don't know. Okay.

10 BAUER: Well -- so there's a difference, in my mind,  
11 between -- Jennifer Bauer, for the record -- there's a  
12 difference between, um, like a one-sided delivery of a message  
13 versus a dissemination of information that compels someone to  
14 perform in a certain way. So a policy should compel someone to  
15 perform in a certain way. And so the agency is obliged to  
16 ensure that that employee had that communication and that  
17 employee had the chance to understand that communication and  
18 those expectations. And so if we don't have something that  
19 says the employee must sign and understand, acknowledge that  
20 understanding, and, um, reading of this policy has occurred,  
21 how else do we enforce that? How else do we ensure that the  
22 employee actually did read and understand?

23 S. PARKER: Okay.

24 SCOTT: Madam Chair, this is Member Scott. I agree with  
25 you, Jennifer. Um, disseminating any policies, there should be

1 an agreement that the employee received the policy. And just  
2 like this furlough policy, or Mr. Farrow signed it, that he  
3 received it and acknowledged that he received it. Um, this  
4 one, though, states that if he refused to sign, he's subject  
5 to disciplinary action. Then, the one that he signed in  
6 relation to the prohibition and, uh, penalties he signed. It  
7 is not stating that there would be -- if there's a refusal to  
8 sign, they be subject to disciplinary action. So I -- I just --  
9 -- I think that there, possibly, should not have been the  
10 statement, because it -- it does have that fear, I think, for  
11 an employee, that if they don't sign, that there would be a  
12 repercussion. If they didn't sign and they didn't take their  
13 furlough within the timeframe that is outlined in the policy,  
14 possibly, then they receive disciplinary action. Thank you.

15 BAUER: Ms. Chair, this is Jennifer again. If I may?

16 S. PARKER: Absolutely.

17 BAUER: Um, I understand the concerns. And -- and I'm  
18 always going to lead first with, um, employee morale, because  
19 again, our staff, ourselves in this room, we are the most  
20 valuable resources to the State of Nevada, as an employer. Um,  
21 I just think that this might be a little off topic from the  
22 substance of the issue, and what remedy we can offer the  
23 grievant.

24 S. PARKER: Okay.

25 UNIDENTIFIED: I keep looking.

1 S. PARKER: I do, too. Then, I remember he is in back  
2 of me and I can't turn my head. So, no (inaudible).

3 BAUER: So Ms. Chair, this is Jennifer, again.

4 S. PARKER: Yes.

5 BAUER: Um, respect and appreciate your passion, Gwyn.  
6 Um, I -- I would be curious to know what you think we can  
7 actually do. We will decide today. We -- we have to.

8 DAVIES: Yeah.

9 BAUER: We can't, not. But -- but in a decision, what  
10 do you think we can do? What are -- what comes to mind?

11 DAVIES: This is -- well, um, the proposed remedy from  
12 Mr. Farrow, I -- I -- I, um, for those -- for those of us  
13 employees who have taken furloughs, leave per instructions  
14 from our director, I propose granting his administrative leave  
15 for the time that we were forced to take. Um, first things  
16 first, Mr. Farrow, you filed the grievance. We're only talking  
17 about you. I'm afraid we can't take actions on coworkers. Uh,  
18 they should -- they should have filed grievances on their own  
19 part, and I would've been overjoyed if that was the case. Um,  
20 and we cannot grant administrative leave, apparently, because  
21 we all agree that the rules are there. Do we have the option  
22 to direct the payroll clerk, Mr. Farrow's payroll clerk, to  
23 return those four hours of annual to him, as they should not  
24 have been -- and like I said, kick it. See where it lands and  
25 see if someone's willing to pick it up. 'Cause, excuse my

1 French, stop the tape. All right? This is a turd. Nobody is  
2 going to want to pick it up. Back on the record. This -- this  
3 matter is ununcomfortable and ugly. It's about mistreatment  
4 to -- I'm gonna throw out a -- a -- a -- a -- a statistic that  
5 just -- Jennifer, I'm sure -- I know Jennifer knows. But it's  
6 floating in the back of her mind. At the end of the last, um,  
7 furlough party that we all took over that couple of years, the  
8 average length of state employee, because I remember taking a  
9 class and I was told this. And it was just not -- off -- a  
10 class down the hallway here. The average length of service of  
11 a state employee at that time was down to 11 and a half years.  
12 We get kicked in the teeth, as state workers, and we leave.  
13 And this is one opportunity that we have to say, we value  
14 state workers, because I don't know what the average length of  
15 state workers in service is now. Hopefully, it's gone up,  
16 because it started at 11 and a half years a while back, and  
17 we've had to build up from there. But we have to send a  
18 message. The message is, this was wrong. The people who made  
19 this mistake are at a level that's way above any of us. Mr.  
20 Farrow, and only Mr. Farrow, because he chose to file a  
21 grievance -- he stood up and said this is wrong. And he's  
22 shining the lights on it. And we agree, Mr. Farrow is wrong --  
23 was wronged. Mr. Farrow should be made whole. And I would say  
24 that, like I said, kick it down the pitch. We would -- we  
25 direct the payroll clerk for Mr. Farrow to return four hours

1 of annual leave to him, for four hours that was originally  
2 filed on the 17<sup>th</sup>, to be taken as, uh, as he noted, uh, in  
3 protest.

4 BAUER: Ms. Chair, this is Jennifer.

5 S. PARKER: Go ahead.

6 BAUER: You know, I have to follow that up, right?

7 S. PARKER: Yes.

8 BAUER: So, um, we, as an EMC, have in the past,  
9 directed agencies to do certain things when it comes to, um,  
10 adjustments to pay and leave compensation, if you will. Um, I  
11 would love nothing more than to craft a motion that directs  
12 the agency to reverse the use of annual leave. However, my  
13 concern is, um, and you acknowledged this yourself, Gwyn, when  
14 we do set precedent. So if we do that, we would essentially be  
15 compensating Mr. Farrow four hours of time not worked, without  
16 recording any sort of leave accrued or any sort of leave  
17 that's provided for in statute or regulation. So it would be  
18 four free hours. And that sets a very dangerous precedent,  
19 going forward. So as much as I agree with you, um, and I -- I  
20 do think that we need to come up with a remedy to make Mr.  
21 Farrow whole. Um, and I'm sad because I'm a troubleshooter,  
22 according to my Myers-Briggs personality type indicator, but  
23 I'm not coming up with some great options right now. Um, so  
24 I'm gonna steal your thunder Ms. Chair, and I'm gonna ask if  
25 we can go a little off grid for a minute and see if we can

1 maybe ask the employer and ask the grievant if there's  
2 something that would come close to a win-win here.

3 S. PARKER: Thank you.

4 BAUER: Yes. Um, I maybe since it's we grievant's case,  
5 can we start with asking the grievant?

6 S. PARKER: Absolutely. Yeah. Mr. Farrell?

7 FARROW: I don't know any way to make it whole. Like,  
8 um, I'm not asking for four hours of basic, free time. I'm  
9 just being, I'm just asking to be made whole.

10 HUDSON: Uh, Genevieve Hudson. Um, so in -- in  
11 consultation with past Executive Director Young, um, I do  
12 believe that there is a way that we could potentially allow  
13 Mr. Farrow to work four hours, potentially today, as if it  
14 were four hours a year, almost a half ago, over a year ago,  
15 and record it so that the time is, and the pay is -- is  
16 commensurate, measurable, consurate --

17 UNIDENTIFIED: Commensurate.

18 HUDSON: -- (inaudible) be payment he was receiving at  
19 the time, so that the four hours of comp time could then be  
20 used during that time, thus giving the four hours of annual  
21 leave back, um, to meet that. But it would require Mr. Farrow  
22 to work an additional four hours to earn that comp time.

23 BAUER: Ms. Chair, this is Jennifer. Clarifying  
24 question?

25 S. PARKER: Yeah, absolutely.

1           BAUER:        Would it be four hours or would it be 2.67?

2           HUDSON:       Sorry. Yes. The -- whatever equals. Uh,  
3 Genevieve Hudson. Um, whatever equals the four hours of that  
4 time (inaudible), yeah.

5           BAUER:        Okay.

6           FARROW:       To speak on that -- I normally get off at 3:30,  
7 so I'm an hour and a half past that, plus my 30 minute lunch.  
8 So that (inaudible) -- I'm sorry. I gotta shoot for my time  
9 here. My time's valuable, just like yours, so.

10          S. PARKER:       So DAG, uh, Weiss, can you hear me?

11          WEISS:         Yes, I can.

12          S. PARKER:       Okay. I'm talking this way, but I know  
13 you're in back at me. Um, so I, I wanna ensure, since we're  
14 trying to actually negotiate something that the -- the  
15 employee and the employer are trying to actually negotiate  
16 something here. Am I able to actually share with them that  
17 whatever they do would not be precedent setting, just so that  
18 we can --

19          WEISS:         Yeah, I mean, um --

20          S. PARKER:       (Inaudible) --.

21          WEISS:         Yeah, chairman -- Chairwoman, I mean, we can --  
22 we can certainly add any kind of disclaimer to anything that  
23 they are able to agree upon, amongst themselves, that this is  
24 not, uh, how everything is going to be, moving forward. This  
25 is just a -- this is a single agreement between the grievant

1 and the employer. Um, that is, doesn't carry anything past  
2 this one, uh, this one. I think we can certainly include some  
3 language that clarifies that in the -- in the decision. Um,  
4 which is, I guess it would be more like a -- more like a  
5 settlement stipulation than a decision, um, in this respect,  
6 assuming the -- the two can, uh, agree on something  
7 cooperative.

8 UNIDENTIFIED: Okay. Your all right with that?

9 S. PARKER: Okay. Thank you.

10 BAUER: Ms. Chair.

11 S. PARKER: Yes? Sorry.

12 BAUER: You're not done with me yet. That's --

13 S. PARKER: Okay.

14 BAUER: Jennifer Bauer, for the record. May I ask a  
15 question of the grievant, since we're a little off grid?

16 S. PARKER: Yes.

17 BAUER: Oh. Since I do have NAC 284.589 open, um, did  
18 you request two weeks in advance administrative leave to  
19 appear here today?

20 FARROW: No (phonetic).

21 BAUER: Okay. So you didn't request, and therefore, you  
22 probably weren't granted.

23 FARROW: No.

24 BAUER: Okay.

25 FARROW: I didn't know I was supposed to.

1           BAUER:       Yeah, it's not often known (phonetic). Okay.  
2 Thank you.

3           S. PARKER:       All right. So we just wanna go through  
4 those clarifications. And I'm -- I'm glad that you brought  
5 that up, too, 'cause I didn't even to think about that. So  
6 this could help in your negotiation. I mean, You guys can feel  
7 for -- we're -- we're off the grid, so you guys can actually  
8 feel -- you can feel free to discuss.

9           HUDSON:       Uh, so Genevieve Hudson, so I think yeah, your  
10 time today could potentially be applied towards that four  
11 hours. Absolutely. Um, I would just need to clarify -- sorry -  
12 - yes, the time towards -- towards the four, total hours, I  
13 guess, however that's usually worded. Um, so I just need to  
14 clarify the paperwork that the payroll clerk would need to do,  
15 to get that -- that calculated appropriately. Um, but I think  
16 that is something that -- that we may have the delegated  
17 authority to agree to today, if that's something that you're  
18 willing to accept. And then, essentially, reverse the four  
19 hours of annual leave back onto your account. I will just  
20 state, for the record, that any of your coworkers who were not  
21 filing grievances, I'm sure will not be very happy to hear  
22 that this is the resolution from today, um, as even his own  
23 employees who report to Mr. Farrow, uh, did the same action of  
24 taking furlough in advance. So that will be a -- probably some  
25 water cooler talk in the department, if you will, that will

1 not be very positive for morale, moving forward, also,  
2 (inaudible) morale.

3 FARROW: Well, they (inaudible).

4 S. PARKER: They have the option. They -- they have it  
5 together, as well.

6 FARROW: They've left the department, so.

7 HUDSON: Okay.

8 S. PARKER: Any committee members have any comments to  
9 make?

10 BAUER: Is -- is our attorney literally biting his  
11 nails over this decision?

12 WEISS: You know, I -- I like creative decisions, or  
13 creative outcomes. And this is certainly that. I'm hoping I'm  
14 not overstepping my bounds allowing this. But, um, I mean, I  
15 think this is really the best way for all parties involved.

16 S. PARKER: Agreed.

17 DAVIES: So do we need to draft a motion? Do we have  
18 agreements between the parties?

19 S. PARKER: So --

20 UNIDENTIFIED: (Inaudible) actually (inaudible).

21 BAUER: Ms. Chair, this is Jennifer again.

22 S. PARKER: Yes?

23 BAUER: As it's been pointed out, congratulations to  
24 Melanie Young on her position, um, at the governor's finance  
25 office.

1 S. PARKER: (Inaudible), 'cause I -- I heard you say  
2 former, and then I'm like, what the heck's going on here? So  
3 what you guys talking about?

4 LARS: Chair?

5 S. PARKER: Yeah?

6 LARS: And if I can ask, please, a question? If the  
7 agency and -- this is Bries Lars (phonetic), for the record --  
8 if the agency and Mr. Farrow are resolving the issue today, is  
9 Mr. Farrow withdrawing his grievance?

10 S. PARKER: If they're in agreement.

11 FARROW: Yes.

12 S. PARKER: That we don't have to (inaudible).

13 LARS: Great. You don't have to make motion if he  
14 withdrew during the hearing (phonetic).

15 S. PARKER: Because they've resolved. Is that -- so  
16 it's a rest con (phonetic).

17 UNIDENTIFIED: Press conference during (inaudible).

18 LARS: My -- my question still stands, though, um,  
19 going back to, um, the employment status of Melanie Young. Um,  
20 she's no longer the Executive Director of Department of  
21 Taxation.

22 UNIDENTIFIED: Right.

23 LARS: So do we have representation from the agency  
24 that can bind? I want it on --

25 S. PARKER: I don't know.

1 LARS: -- (inaudible) on the record. You might, as  
2 chair.

3 S. PARKER: Oh, I do. Okay. Okay.

4 HUDSON: Uh, Madam Chair, Genevieve Hudson. Um, as the  
5 personnel officer for the department, um, I believe that I can  
6 make that decision, on the department's behalf.

7 S. PARKER: Okay.

8 LARS: Thank you.

9 S. PARKER: Thank you. So -- so we will get a  
10 decision, or we don't even do a letter, 'cause they've  
11 actually -- okay. So you guys have resolved this. And so --  
12 and then, if there's any issues -- what?

13 UNIDENTIFIED: That has (to work out between the two of  
14 them.

15 S. PARKER: Okay. All right. This is okay. Thank you,  
16 everybody.

17 HUDSON: Sorry to complicate matters.

18 S. PARKER: That's okay.

19 HUDSON: Genevieve Hudson, for the record, again. Um, I  
20 -- I believe in a resolution conference, there's usually some  
21 sort of documentation or something like that -- right? -- or  
22 no? It's been a while.

23 S. PARKER: It's a grievance (inaudible) --

24 HUDSON: So they're required --

25 S. PARKER: -- too, so.

1 HUDSON: Okay, so -- 'cause it has been a while. Um, if  
2 -- if the grievant feels that the resolution in the res  
3 conference is not followed through with, the grievant can  
4 refile, is that correct?

5 S. PARKER: And it would be a new incident. Correct.

6 HUDSON: Correct?

7 S. PARKER: It would be a new incident for not  
8 following through on an agreement.

9 HUDSON: Okay.

10 S. PARKER: So the incident today wouldn't be --

11 HUDSON: Just wanted to --

12 S. PARKER: Yeah.

13 HUDSON: Yeah. I just wanted to be clear about that.

14 S. PARKER: Yeah. And I think they're going to --  
15 you're gonna be moving quickly on this, 'cause it'll include  
16 today and stuff. So there won't be -- go ahead, (inaudible).

17 UNIDENTIFIED: For the record -- I'm not supposed to be  
18 on the record. Um, whenever it's a compensation issue --

19 UNIDENTIFIED: What's your name?

20 DENISE: I don't know. You don't hear -- you don't want  
21 -- see you. Okay. Anyway. With a compensation issue, every  
22 time a paycheck comes out and that compensation issue still  
23 exists, it's an event date. That is our typical practice.  
24 That's our practice.

25 DAVIES: I'm afraid I can't hear Denise (phonetic).

1 DENISE: Sorry, my mask. I'm sorry, Gwyn. When it's a  
2 compensation issue, every time there is a paycheck, that  
3 creates a new event date, because comp (inaudible) --  
4 compensation issues still exist. So they were asking about --  
5 if, uh, Mr. Farrell could refile, uh, or -- or file a new  
6 grievance, if this agreement between them didn't work out.

7 HUDSON: He would then file a new grievance, with a new  
8 event date, because they didn't meet him halfway, here in the  
9 hearing.

10 UNIDENTIFIED: Does that clear your question?

11 HUDSON: Does that clear your question, (inaudible)?

12 S. PARKER: No, do -- do you have questions on that?

13 FARROW: No.

14 S. PARKER: Okay. You (inaudible) --

15 FARROW: So basically, my time today kind of washes with  
16 the comp time, and whatever.

17 S. PARKER: Yeah, you may -- yeah, because they'll  
18 have to go back and see what that time was then, because it'll  
19 be lower. And right now it'll probably be higher, unless you  
20 were at the top end, or whatever.

21 FARROW: No, no, not what she said.

22 S. PARKER: Oh.

23 HUDSON: Madam Chair? For the record, Genevieve Hudson.  
24 I -- I will, um, I will commit to sending an email tomorrow,  
25 um, that -- copying Mr. Farrow, to the pay clerk, and, um,

1 copying Melanie and the current director, um, that verifies  
2 what we've discussed today and agreed to today. Um, and asking  
3 the pay clerk for the appropriate calculations, so that we can  
4 take the time from today, apply that accordingly, and get all  
5 the rest of the paperwork figured out.

6 FARROW: Okay.

7 HUDSON: If that --

8 S. PARKER: Yeah.

9 HUDSON: -- eases the committee?

10 DENISE: Right. And then -- but you're saying that if  
11 there's additional time, because if -- I don't know -- if it's  
12 only an hour and a half, we need to get 2.67 to get you your  
13 four hours.

14 FARROW: Uh, well I've been at work since 7 this  
15 morning, so.

16 DENISE: So 7 to 4?

17 FARROW: So --

18 DENISE: 7 to 3 --

19 FARROW: -- 7 to 5 -- well --

20 DENISE: 7 to 3:30?

21 FARROW: It's 5:10 right now.

22 DENISE: So that's an hour and a half.

23 FARROW: Okay.

24 DENISE: And you need 2.67 hours to make up four hours  
25 of annual leave. There's gonna be additional time. So they

1 will figure that out.

2 FARROW: Minus lunch. We never got a lunch.

3 DENISE: Okay. So if you have this discrepancies --

4 FARROW: That's what I was saying. It basically is a  
5 wash.

6 HUDSON: Almost.

7 DENISE: Oh, it is.

8 HUDSON: Almost.

9 DENISE: I don't know if it's gonna be a whole 2.67, so.

10 FARROW: Yeah.

11 DENISE: They will figure that out. If you have an issue  
12 with how that's figured out and stuff, try and work together  
13 on that and stuff. And then if you still have an issue, that's  
14 a new incident, so. I -- I think they're (inaudible).

15 FARROW: Yes.

16 S. PARKER: Awesome. Okay. Well, thank you everybody.  
17 I appreciate it. And we're -- I was just getting ready to do  
18 that. So number (inaudible) on the agenda -- we are gonna  
19 actually move to -- which is, uh -- thank you so much.

20 FARROW: Thank you.

21 S. PARKER: So number 7615, um, we're gonna move that  
22 to the next agenda. So that'll be heard on the -- the 16th or  
23 the 23rd. 23rd, right? Okay. And I'll call for public comment.

24 FARROW: Thank you.

25 DAVIES: Nobody here to make comment in the south.

1 S. PARKER: Thank you. And any public comment in  
2 Northern Nevada?

3 UNIDENTITIFED: Nope.

4 S. PARKER: What?

5 DAVIES: Yeah, get a better electrician.

6 S. PARKER: Oh, no, I know. I didn't do that. Okay. No  
7 vote or action may be taken upon a matter raised during public  
8 comment until the matter itself has been specifically included  
9 on an agenda as an item upon which action may be taken.  
10 Comments will be limited to five minutes per person and  
11 persons making comment will be asked to begin by stating their  
12 name, for the record. Do I hear any public comment in northern  
13 Nevada? Hearing none. Do we move for adjournment? And it is  
14 5:10? 5:10.

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16 \*\*\* END OF MEETING \*\*\*

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