



**STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE**

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**Meeting Minutes of the Employee-Management Committee
Date: May 06, 2021**

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

Committee Members:

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

Employee Representatives

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

Staff Present:

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

1. Call to Order

Chair Beigel called the meeting to order at approximately at 9:01 a.m.

2. Public Comment

There were no comments from the audience or the Committee.

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

4. Adoption of the Agenda – Action Item

Chair Beigel requested the Committee approve the agenda.

MOTION: Moved to approve agenda.

BY: Member Thompson

SECOND: Member Parker

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

5. Discussion and possible action related to Grievance #6899, Jesse Haines Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee¹ (“EMC”) on May 6, 2021, pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance #6899, filed by the State of Nevada, Department of Corrections Officer Jesse Haines (“Grievant” or “Officer Haines”). The Grievant was present in proper person. The Agency-Employer, the State of Nevada, Department of Corrections (“NDOC”) was not present.

Chair Beigel swore the Grievant in before testifying at the hearing.

Officer Haines requested that the EMC grant his Grievance, as NDOC failed to appear.

Mr. Haines noted that he had been unable to take comp time for working overtime, but since he filed his Grievance, NDOC had allowed him to do so.

Chair Beigel noted that concerning compensation for overtime services, the DOC 1048 form the Grievant signed stated that for non-holidays NDOC Management decided the type of compensation, but for holidays the form of compensation was exclusively decided by the Employee and that the form of compensation taken by the Employee

¹ The Committee members present at the hearing representing a quorum were as follows: Pauline Beigel (NDOT), who chaired the meeting; Sherri Thompson (DETR), Stephanie Parker (UNR) and Jennifer Bauer (SPCSA). Counsel for the Committee, Deputy Attorney General Robert A. Whitney, was also present, as were EMC coordinator Breece Flores and EMC Admin. Clerk Ivory Wright.

must be communicated by the Employee to NDOC Management before actually performing the overtime.

Mr. Haines responded that he had agreed with her that under 29 CFR §553.23 there had to be an agreement by both the Employee and the Employer before any hours being worked.

Mr. Haines stated NDOC had been saying that they wanted everyone to take mandatory overtime for pay because NDOC was worried about its Employees accruing comp time.

Mr. Haines stated that the agreement, the DOC 1048, concerning compensatory time instead of overtime needed to be signed annually.

Mr. Haines further stated that the agreements he had submitted were from 2017-2018.

Chair Beigel asked Mr. Haines if he had signed any agreements since that time.

Mr. Haines responded that he had not signed any agreements concerning compensatory time since that period.

Mr. Haines testified that he had notified NDOC that he had rescinded the prior agreement.

Mr. Haines noted that in the AFCSME tentative bargaining agreement the allowance of compensatory time for overtime was listed.

Mr. Haines stated that his main issue in the Grievance was that he was being forced to work mandatory overtime, which affected his child support payments, and when the mandatory overtime went away, he still had to pay child support, but at a high payment amount.

Member Parker stated that she did not see how anything in the Grievance could potentially be resolved, so under the circumstances, with the AFCSME potential agreement, should the Grievance have been withdrawn, or had it been resolved would be the question.

Mr. Haines stated that he had not received anything in writing from NDOC saying he could take overtime for compensatory time, but in reality, NDOC was allowing him to do so.

Mr. Haines stated that he wanted something in writing to avoid having to go through this same Grievance procedure in the future.

Chair Beigel asked the board for discussion, and the EMC began its deliberations.

Member Bauer stated that when one looked at overtime compensation, whether it was accrued compensatory leave or a cash payment, NAC 284.250 was clear that the method of compensating an Employee for overtime was cash payment, and in her years in State Service she had always managed with that regulation in mind and that the method was cash for compensation of overtime.

Member Bauer stated in substance that in NAC 284.250(2) it read the Employee and Appointing Authority could enter into an agreement which complied with the provisions of 29 CFR §553.23 for compensating an Employee for overtime with compensatory time, so that the CFR and NAC 284.250(2) were both permissive, and that it did not bind the Employee to agree, nor did it bind the Employer to offer that agreement and agree with the Employee.

Member Bauer stated she thought that the present situation was a little difficult to decide because NDOC was not present but again stated that the statute and regulation were permissive, so the current Grievance would fall into the situation where the agency had the right to run its affairs as it saw fit, as long as the agency did not violate any laws.

Mr. Haines stated that he felt NDOC did violate 29 CFR §553.23, because there was an agreement about compensatory time in place, and according to 29 CFR §553.23 the type of compensation had to be agreed upon, by both the Employee and Employer, before any hours being worked.

Chair Beigel stated that when the motion was made the EMC should put in it that whatever was decided would be in effect until the union agreement superseded it.

Chair Beigel stated that she was inclined to agree with Mr. Haines and grant the Grievance to allow compensatory time instead of cash payment in part based on NDOC failing to appear, but also based on 29 CFR §553.23.

Member Parker stated she agreed with Chair Beigel.

Member Thompson stated that she also had agreed with the other Members.

Member Thompson stated the reference to the Collective Bargaining Agreement in the 29 CFR §553.23, and that if NDOC did not appear to oppose and were letting their Employees take compensatory time for overtime anyway she thought the Grievance should be granted.

Member Bauer stated she looked to her fellow EMC members to help her understand wherein the CFR or NAC was there an obligation for an

Employer to allow compensatory time instead of cash payment because all she had seen was permissive language.

Member Parker stated she would look to 29 CFR§ 553.23(c), titled “Agreement or understanding between the public agency and individual Employees.”

Member Parker noted that the CFR stated that there did not have to be a written agreement between Employer and Employee, and that was when there was no Employee Representative.

Member Parker noted that in 29 CFR §553.23(c) indicated that the agreement and understanding concerning compensatory time off must be between the Public Agency and individual Employee, and must be reached before the performance of work and that although the agreement or understanding with individual Employees need not be in writing, a record of its existence must be kept.

Member Parker also stated that 29 CFR §553.23(c) indicated that the Employer need not adopt the same agreement or understanding with different Employees, and need not provide compensatory time to all Employees and that the agreement or understanding to provide compensatory time off instead of cash overtime compensation may take the form of an express condition of employment, provided the employee knowingly and voluntarily agreed to it as a condition of employment and the employee was informed that compensatory time received may be preserved.

Member Parker also noted that in 29 CFR §553.23(c) stated that an agreement or understanding may be evidenced by a notice of the Employee that the compensatory time off would be given instead of overtime pay.

Member Parker stated that the CFR said that an agreement or understanding would be presumed to exist for purposes of Section 7 of the [Fair Labor Standards Act of 1938] Act concerning an employee who failed to express to the Employer an unwillingness to accept compensatory time instead of overtime pay and that the Employee’s decision to accept compensatory time off instead of overtime compensation payments must be made freely and without coercion.

Chair Beigel stated that the Agency she had previously worked for required its Employees to take compensatory time and that they had to sign an agreement that said if they worked overtime it was compensated for as compensatory time. In the present case, there was a signed agreement that Mr. Haines said he had rescinded, but the agreement stated that for holidays the agreement provided for overtime to be compensated one way, and for non-holidays overtime would be compensated another way.

Member Bauer stated that for non-holidays the form of compensation would be decided by Management.

Member Bauer stated that there was no evidence that the 2018 agreement for a compensatory time was rescinded, and that the agreement might be in effect at that time, and if that was the case it said for non-holidays Management could decide whether overtime was compensated by compensatory time or cash.

Chair Beigel noted that Mr. Haines had testified indicating that he rescinded the agreement, although Member Bauer indicated that the only evidence of rescission was Mr. Haines's testimony.

Member Parker said she understood the discussion, but she did not see a 2019 agreement, and that the agreements were signed annually, and that if there was such an agreement the agency would have appeared or responded.

Member Bauer felt that the problem was she had nothing that said the compensatory time agreement must be signed annually, and she did not have a preponderance of the evidence that the 2018 agreement was rescinded, and the Agency could not testify to answer if it was current or expired.

Mr. Haines stated there was an agreement from 2017 and another agreement from 2018 that he submitted with his Grievance.

Member Parker noted that in NDOC's response on the Grievance that NDOC had stated Mr. Haines had two agreements in his file, and that they had no agreement from 2019.

Mr. Haines stated that he had attached to his Grievance an agreement from 2017 and another agreement from 2018, and he believed that it was reasonable to construe the agreements having to be signed annually and that if there was an agreement for 2019 or later then why would NDOC not have attached them.

Member Thompson stated that there were two agreements signed in 2018 and if he was aware of why that had occurred.

Mr. Haines responded that he was unsure of why two agreements were signed in 2018 and thought it may have had something to do with NDOC having two different shift bids at that time.

Member Bauer asked Mr. Haines if he had rescinded the compensatory time agreement after 2018, he was still accruing compensatory time instead of cash payment for overtime because that is what the absence of an agreement would result in.

Mr. Haines responded that he had been collecting compensatory time since he filed his Grievance for all overtime he worked and that NDOC allowed him to do so.

Mr. Haines stated that when he looked at 29 CFR §553.23 it stated that the Employee had the right to refuse compensatory time instead of cash payment if the Employee wanted to be paid overtime in cash, but his situation was the opposite of that.

Mr. Haines again stated that the fact of the matter was that the Agency was allowing this to occur since he filed his Grievance.

Member Bauer noted that it seemed as though a change in behavior by NDOC had occurred in the time elapsed since the Grievance was filed, and again NDOC was not present and that it would be great for both Grievant and NDOC if the form of compensation was consistently enforced.

Chair Beigel stated she was unsure when reading 29 CFR §553 if it had to be a decision that was consistently enforced because an agreement in this situation was specific to the Employee.

Chair Beigel asked Mr. Haines how much compensatory time he had accrued since filing his Grievance.

Mr. Haines responded that he had 30 to 50 hours of compensatory time currently, he thought, but was unsure how much compensatory time he had accrued since filing his Grievance.

Chair Beigel stated she was only asking to be sure that the Grievant was aware that he would be required to cash out any compensatory time over 120 hours.

Mr. Haines responded it was no longer 120 hours accrual, and he had thought that this requirement had been changed to 240 hours.

Mr. Haines stated to the Chair if putting in a motion language regarding AFCSME and the Collective Bargaining Agreement, which would take effect on July 01, 2021.

Member Thompson asked if the Collective Bargaining Agreement had been voted on.

Mr. Haines responded it had not, although a tentative agreement had been released, and that it would be voted on soon.

Mr. Haines suggested languages such as notwithstanding the Collective Bargaining Agreement by Union Representation or words to that effect.

Member Parker suggested wording for a motion such as: “To approve Grievance #6899 to allow compensation in the form of cash or the accrual of compensatory time as supported by NAC 284.250, as well as 29 CFR §553. 23(c).”

Mr. Haines suggested adding the wording “Precluding any Collective Bargaining Agreement that was made between the Employer and Employee.”

Member Bauer stated she would not be supporting a motion, that would set a dangerous precedent, and that it bound an Agency to something that had to be a mutual agreement, that must be between the Appointing Authority and the Employee, and that nothing was mandating the Appointing Authority to allow an Employee to accrue compensatory time for overtime.

Chair Beigel noted that the EMC could approve a Grievance in part and deny it in part.

Member Parker stated that she wanted to stay contingent in her motion, and did not know what a resolution would be and that if the EMC approved the Grievance, it was only to state that the Employer and Employee could determine whether or not the Employee received cash payment or compensatory time accrual.

Chair Beigel noted that the EMC could approve and stated that the agreement was not setting precedent due to the Collective Bargaining Agreement.

Chair Beigel also stated that if Mr. Haines was testifying that NDOC had been allowing him to take compensatory time, and the EMC was approving the Grievance based on this testimony and the fact that the agency failed to appear and dispute the testimony, she found approval of the Grievance acceptable.

Mr. Haines stated he had offered to submit timesheets showing his accrual of compensatory time instead of cash payment.

Chair Beigel stated she was not inclined to require them, as Mr. Haines’ testimony was undisputed.

Chair Beigel asked Member Bauer if she would feel better if Mr. Haines submitted his timesheets to the board to review during the hearing.

Member Bauer stated ancillary evidence was not the issue for her, and to her, there was an agreement in place to allow the Grievant to accrue compensatory time for overtime, but the agreement said it was decided by management, and that she had seen something that said the agreement

was in effect, and if the idea was that the agreement was rescinded then that did not help the case and allowed for NDOC to use its right to pay its Employees with cash instead of accrued compensatory time.

Member Bauer also stated that she understood that anything that was negotiated and executed between the Employer and the Employee with collective bargaining should prevail over an EMC decision, but questioned would such a collective bargaining agreement be specific to that class of Employees.

Member Bauer stated that the reason the EMC decision could set precedent was that if the EMC were to have to decide a Grievance similar to the present Grievance and the class of Employees had not went through collective bargaining yet, then there could be precedent from this decision, so she was not in favor of granting the Grievance.

Member Parker suggested a motion to approve Grievance #6899 to allow the Employee the opportunity to elect accrual of compensatory time instead of cash payment due to undisputed testimony provided that the Employee had been allowed to select accrual of compensatory time since the filing of the current Grievance, supported by NAC 284.250 that allowed either cash payment or compensatory accrual, and 29 CFR § 553.23(c) that allowed cash payment or compensatory accrual.

Member Parker asked if Member Bauer would be willing to approve the motion if it was aimed just at the present circumstances and the Employee.

Member Bauer stated that she would not be willing to approve the motion, and that she sympathized with Grievant, but that the NAC was clear that the agreement must be mutual so that if the EMC were to grant the Grievance the decision it would be contradicting the ability of an agency to run its affairs as it saw fit.

Mr. Haines suggested language for a motion to include the fact that the mandatory overtime could be taken for the compensatory time instead of cash payment, because then the Employer was mandating him to work, which changed his child support obligation.

Mr. Haines suggested if the overtime was voluntary then the decision could be between the Employer and Employee.

Member Bauer stated that she was looking at the NAC 284.250 again because she thought it dealt with compensation of mandatory overtime vs. non-mandatory overtime.

Chair Beigel was unsure if NAC covered mandatory vs non-mandatory overtime and thought that the distinction was specific to NDOC.

Member Bauer stated that she had found an Administrative Regulation, (AR) 322, that read overtime compensation was governed by NAC 284.250, and that under section 4(b) of the AR, Employees must sign an overtime compensation Policy Doc 48 acknowledging the overtime compensation policy but did not know if this was an agreement or acknowledgment of a policy, and that there was a difference between acknowledgment and agreement. She also noted that 4(c) of AR 322, stated overtime compensation, and that payment of wages versus accrual of compensatory time for overtime services on non-holidays was exclusively at the direction of the Appointing Authority. Overtime compensation for overtime services on holidays was exclusively at the discretion of the Employee. The form of compensation must be announced before any overtime services being performed.

Chair Beigel said that to her the language in AR 322 sounded like the language in the Doc 1048 form.

Member Bauer stated that she did not find anything that dealt with mandatory overtime compensation differently, but to her AR 322 reinforced compensatory time is at the discretion of the Appointing Authority for non-holidays.

Chair Beigel asked Mr. Haines if he had been working overtime on non-holidays since the Grievance was filed.

Mr. Haines responded that he had worked a few such shifts, and had taken them for compensatory time and that he communicated to NDOC that he wanted the overtime he worked to be compensatory time by just putting it on his timesheet as compensatory time.

Mr. Haines stated NDOC initially denied his timesheet when he claimed compensatory time, and that NDOC had said, due to whatever fiscal issue they had, NDOC was not allowing compensatory time.

Mr. Haines stated that since he filed the Grievance, he still put compensatory time on his timesheets and NDOC had approved the timesheets.

Chair Beigel asked Mr. Haines if this was for both mandatory and non-mandatory overtime.

Mr. Haines responded, "Yes, it is."

Chair Beigel asked Mr. Haines if essentially the current Grievance was because he wanted something written before the unions stepped in and took this subject area over.

Mr. Haines said in substance that was the case.

Member Parker stated her suggested motion that due to the lack of representation and objection from the Agency she moved to approve Grievance #6899 thereby allowing the Employee the opportunity to elect accrual of compensatory time instead of cash payment for mandatory overtime, which was supported by NAC 284.250, and further 29 CFR § 553.23(c) supported the practice, precluding a collective bargaining agreement between the Agency and the Appointing Authority.

Member Parker added that she wanted to say the decision was an interim measure, and the outcome of the tentative collective agreement would prevail.

Chair Beigel questioned the mandatory overtime wording that was set in the motion proposed by Member Parker.

Member Parker suggested taking that wording out.

Chair Beigel noted the distinction on the form Doc No. 48 was between holidays and non-holidays, and not the type of overtime.

Chair Beigel stated that the agency was not present to dispute what Mr. Haines had testified to, and that NDOC had been allowing the practice to occur based on Mr. Haines' testimony, which to her would be considered an agreement by signing off on the timesheet and allowing compensatory time, but that it sounded like it was being done post working the overtime even though it was supposed to be before working the overtime.

Member Parker motioned that due to the lack of Representation and objection from the Agency she moved to approve Grievance #6899, thereby allowing the Grievant the opportunity to elect accrual of compensatory time instead of cash payment for non-holiday overtime due to undisputed testimony provided by the Employee that the Employee had been allowed to elect accrual of compensatory since the filing of his Grievance and supported by NAC 284.250. Further, 29 CFR §553.23 supports this practice precluding a collective bargaining agreement between the agency and Employee Representative. This decision is an interim measure, and the outcome of the tentative agreement would prevail going forward.

Chair Beigel noted that the motion was specific to the Grievant, based on what the agency had been doing since the Grievance was filed.

Member Thompson seconded the motion.

The motion carried 3 to 1, with Member Bauer voting against the motion.

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, the briefs, evidence, and documents on file in this matter, the EMC makes the following findings of fact. All findings made are based upon a preponderance of the evidence.

1. The Grievant was a non-exempt State of Nevada Employee.
2. The Grievant was employed by NDOC as a Correctional Officer on November 15, 2019.
3. The Grievant had signed agreements with NDOC concerning compensatory time for the years 2017 and 2018.
4. The Grievant stated that he had after 2018 rescinded his agreement with NDOC concerning how he was to receive compensatory time.
5. Since filing Grievance #6899, the Grievant had worked both mandatory and non-mandatory overtime.
6. Since filing Grievance #6899 the Grievant had worked overtime for a few shifts on non-holidays and had taken compensatory time for those shifts.
7. Since filing Grievance #6899 the Grievant has taken compensatory time by putting it down on his timesheets.
8. The NDOC, except for Grievant's initial timesheet submitted since he filed the instant Grievance, accepted Grievant's timesheets on which he has taken compensatory time.
9. The NDOC failed to appear at the hearing for Grievance #6899.

CONCLUSIONS OF LAW

1. A Grievance is any act, omission, or occurrence which an Employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an Employer and an Employee. NRS 284.384(6).
2. NAC 284.250 states in relevant part: Overtime: Compensation.
 1. Except as otherwise provided in subsection 2, the method of compensating an Employee for overtime is cash payment which is computed at the rate of time and one-half of the Employee's normal rate of pay as required pursuant to [NRS 284.180](#).
 2. The Employee and the Appointing Authority may enter into an agreement that complies with the provisions of 29 C.F.R. §553.23 for compensating a nonexempt Employee for overtime with compensatory time instead of cash payment.
3. 29 CFR §553.23(c) states:

(c) Agreement or understanding between the public agency and individual Employees.

(1) Where [Employees](#) of a [public agency](#) do not have a recognized or otherwise designated representative, the agreement or understanding concerning compensatory time off must be between the [public agency](#) and the individual [Employee](#) and must be reached before the performance of work. This agreement or understanding with individual [Employees](#) need not be in writing, but a record of its existence must be kept. (See [§ 553.50](#).) An [Employer](#) need not adopt the same agreement or understanding with different [Employees](#) and need not provide compensatory time to all [Employees](#). The agreement or understanding to provide compensatory time off instead of cash overtime compensation may take the form of an express condition of employment, provided (i) the [Employee](#) knowingly and voluntarily agrees to it as a condition of employment and (ii) the [Employee](#) is informed that the compensatory time received may be preserved, used or cashed out consistent with the provisions of section 7(o) of the [Act](#). An agreement or understanding may be evidenced by a notice to the [Employee](#) that compensatory time off will be given instead of overtime pay. In such a case, an agreement or understanding would be presumed to exist for purposes of section 7(o) concerning any [Employee](#) who fails to express to the [Employer](#) an unwillingness to accept compensatory time off instead of overtime pay. However, the [Employee's](#) decision to accept compensatory time off instead of cash overtime payments must be made freely and without coercion or pressure.

(2) Section 2(a) of the 1985 Amendments provides that in the case of [Employees](#) who have no representative and were employed before April 15, 1986, a [public agency](#) that has had a regular practice of awarding compensatory time off instead of overtime pay is deemed to have reached an agreement or understanding with these [Employees](#) as of April 15, 1986. A [public agency](#) need not secure an agreement or understanding with each [Employee](#) employed before that date. If, however, such a regular practice does not conform to the provisions of section 7(o) of the [Act](#), it must be modified to do so concerning practices after April 14, 1986. Concerning [Employees](#) hired after April 14, 1986, the public [Employer](#) who elects to use compensatory time must follow the guidelines on agreements discussed in [paragraph \(c\)\(1\)](#) of this section.

4. For this Grievance, it was the Grievant's burden to establish by a preponderance of the evidence that he should receive compensatory

time instead of cash payment as compensation for overtime he worked.

5. Both NAC 284.250(2) and 29 CFR § 553.23(c) support compensatory time is granted instead of cash payment for overtime worked if there is an agreement to do so between the Employer and Employee.
6. In this case, there appeared to be an agreement between NDOC and the Grievant to allow the Grievant to take compensatory time for overtime work instead of cash payment, as evidenced by the Grievant putting compensatory time on his timesheets and NDOC accepting these timesheets and allowing the compensatory time, albeit such an agreement was after the actual overtime worked.
7. The distinction between mandatory and non-mandatory overtime was not legally significant under either NAC 284.250(2) or 29 CFR § 553.23(c).
8. This decision is an interim measure, and the outcome of the tentative collective bargaining agreement will prevail.
9. Conclusions of Law that are more appropriately Findings of Fact shall be deemed Findings of Fact.

DECISION

Grievance #6899 is hereby **GRANTED**. The Grievant has the opportunity to elect accrual of compensatory time instead of cash payment for non-holiday overtime worked. This decision is an interim measure, and the outcome of the tentative Collective Bargaining Agreement would prevail going forward. The Decision is specific to Officer Jesse Haines.

MOTION: Moved to grant Grievance #6899, thereby allowing the Grievant the opportunity to elect accrual of compensatory time instead of cash payment for non-holiday overtime due to undisputed testimony provided by the Employee that the Employee had been allowed to elect accrual of compensatory since the filing of his Grievance and supported by NAC 284.250. Further, 29 CFR §553.23 supports this practice precluding a Collective Bargaining Agreement between the Agency and the Employee Representative. This decision is an interim measure, and the outcome of the tentative agreement would prevail going forward.

BY: Member Parker

SECOND: Member Thompson

VOTE: The vote 3 to 1 in favor of the motion with Member Bauer voting nay.

6. Discussion and possible action related to Grievance #7242, Jesse Haines Department of Corrections – Action Item

This matter came on for hearing before the Employee-Management Committee² (“EMC”) on May 6, 2021, pursuant to NAC 284.695 and NAC 284.6955, regarding Grievance #7242, filed by the State of Nevada, Department of Corrections Officer Jesse Haines (“Grievant” or “Officer Haines”). Grievant was present in proper person. The Agency-Employer, the State of Nevada, Department of Corrections (“NDOC”) was not present.

Chair Beigel swore in the Grievant to testify at the hearing for Grievance #7242.

Mr. Haines stated that last year during COVID he had left Nevada to visit family, and only left the State for two days.

Mr. Haines testified ~~that~~ when he returned, he had no COVID symptoms, he reported to work, he was allowed to go to his unit, then his Supervisor called him and told him he had to go home and self-quarantine for 14 days.

Mr. Haines stated he asked NDOC why he had to do so, he stated NDOC had told him it was because he had traveled out of state.

Mr. Haines requested ~~that~~ the EMC grant his Grievance due to NDOC’s failure to appear and object, and he said he could also provide proof of the Governor’s Travel Advisory Directive and information from the NDOC Medical Director, Dr. Minev, which was contradictory.

Member Bauer stated that she would like to see the directives referenced by the Grievant.

Chair Beigel asked Member Bauer if she was talking about Dr. Minev’s email or another document.

Member Bauer stated the email and the Governor’s Travel Advisory from March 2020.

Chair Beigel noted ~~that~~ some of the information related to COVID sounded contradictory when COVID first hit and that for people who lived in another state but worked in Nevada it was permissive for them to come into Nevada for their work.

Chair Beigel noted that on March 31, 2020, the Travel Advisory was issued which urged returning Nevadans to self-quarantine and monitor

² The Committee members present at the hearing representing a quorum were as follows: Pauline Beigel (NDOT), who chaired the meeting; Sherri Thompson (DETR), Stephanie Parker (UNR) and Jennifer Bauer (SPCSA). Counsel for the Committee, Deputy Attorney General Robert A. Whitney, was also present, as were EMC coordinator Breece Flores and EMC Admin. Clerk Ivory Wright.

their health for 14 days after arriving or returning to Nevada to help contain the spread of COVID.

Chair Beigel stated ~~that~~ she seemed to recall each Agency having its Human Resources in charge, or in NDOC's case Dr. Minev decided whether its Employees could go back to work or not.

Chair Beigel stated ~~that~~ she was viewing the Emergency Declaration, No. 7 in that document, on page four, and asked if Mr. Haines had the rest of No. 7 (later in the meeting Mr. Haines stated that he had the rest of the information, but it was deemed unnecessary at the time for him to provide it).

Member Bauer noted ~~that~~ the information Mr. Haines had provided in the Emergency Declaration had been codified as regulation and that the missing section read that "to the extent not already covered in Subsection 4, during any period in which a State of Emergency or Declaration of Disaster has been proclaimed pursuant to NRS 414.070, an Appointing Authority may grant Administrative Leave with pay to an Employee for purposes related to health and safety."

Chair Beigel noted that the Regulation was permissive, as it used the word may.

Member Bauer asked Mr. Haines if he had evidence that Administrative Leave was granted in other situations for travel out of state or self-quarantine where the person had not been infected by COVID.

Mr. Haines responded yes ~~that~~ he had such evidence.

Mr. Haines testified that there was another Officer who had traveled out of State, returned and NDOC had his quarantine, and at first told him he would need to use sick leave, but then granted the Officer Administrative Leave.

Mr. Haines stated he had tested positive for COVID in October 2020 and showed no symptoms, yet NDOC had him self-quarantine.

Mr. Haines noted that under the Travel Advisory, under the COVID 19 Update section, the second paragraph said that staff with COVID symptoms would be sent home to be evaluated by Medical Providers and that Employees would need to be symptom-free for at least 72 hours before returning to work.

Mr. Haines stated that he never had any COVID symptoms, and he was back in Nevada for at least 7 days before showing up to work and that Governor Sisolak's Travel Advisory stated that the Travel Advisory did not apply to healthcare, public health, public safety, transportation, food

supply, and essential Employees and that the Governor was only urging Employees not to go out of state.

Mr. Haines testified that the COVID email from Medical Director Dr. Minev, which went into a situation where an employee came into contact with someone that was positive or had symptoms, indicated when an Employee had to quarantine, but even in Dr. Minev's email the Employee had to remain home for the full 14 days or until the Employee received a negative COVID 19 test result, or until 72 hours after symptoms had cleared or 72 hours after the Employee's close contact symptoms had cleared, so the entire premise throughout that time was to be 72-hour symptom-free.

Chair Beigel stated when Mr. Haines spoke about the 72 hours, she was reading the section to say 72 hours after the person that the Employee was in contact with that was deemed positive was symptom-free for 72 hours.

Mr. Haines stated he had agreed with this interpretation, adding that he had been visiting family who was not positive for COVID.

Chair Beigel added that in Dr. Minev's email at the bottom, the second to last paragraph said if an Employee went on quarantine he or she would need to use and exhaust their compensatory and sick time first, and then annual, and administrative leave would be approved by NDOC Human Resources on a case-by-case basis.

Mr. Haines stated despite this wording as proposed by the EMC, NDOC was still granting people administrative leave, and that raised another problem because staff would travel out of state, would return, and not report the travel because the staff did not want to burn sick time because they had no symptoms.

Member Parker asked Mr. Haines if he had no symptoms and was sent home only because he had traveled out of state.

Mr. Haines responded that was correct.

Member Bauer noted that not only was NDOC not present, but there was no Step 3 response by NDOC to the Grievance either, so there was no Director's level response.

Chair Beigel stated that she believed if NDOC did not answer or appear perhaps the matter was not that important to them.

Member Bauer stated she was uncomfortable with Mr. Haines being denied administration leave, leaving him forced to use sick leave because she thought there was a lot of ambiguity and vagueness surrounding the

circumstances, but she was unsure whether the EMC had the authority to overturn the sick leave use and grant administrative leave.

Mr. Haines stated that his resolution was for NDOC to put the 48 hours of sick leave back into his sick leave bank.

Chair Beigel stated she was of that same mind but questioned whether the EMC had the right to do so and if the EMC would be violating NRS 284.020 if they overturned the sick leave use and granted administrative leave.

Chair Beigel felt this Grievance was more nebulous than the last Grievance (No. 6899) but noted that because health information was confidential NDOC could not share what decisions they had made with other Employees concerning leave.

Mr. Haines testified that he returned on May 3, 2020, but did not return to work until May 10, 2020, so he used 40 hours, not 48.

Member Thompson asked if NDOC had asked Mr. Haines to take a COVID test upon his return.

Mr. Haines responded that he did not believe that his Department began doing COVID testing until June or July 2020 and that he did not believe NDOC asked him to take a COVID test on May 3, 2020.

Mr. Haines noted that he had already returned to Nevada and had been on annual leave without symptoms when he returned to work and going by the 72-hour rule for being COVID free he felt he was fine when he reported working on May 3, 2020.

Member Parker moved to affirm Grievance #7242, restoring to Officer Jesse Haines the hours of sick leave, May 3, 2020, until May 10, 2020, based on email correspondence submitted into evidence from Dr. Michael Minev related to COVID protocol that did not reflect this Employee met the criteria for quarantine that would result in using personal sick leave.

The motion was seconded by Member Thompson.

Member Bauer questioned if the EMC said restoring the hours of sick leave used May 3rd through May 10th, did the EMC feel that language was strong enough to compel NDOC to provide a remedy for the Grievant.

Member Bauer pointed out that she did not know how many hours of sick leave were used by Grievant.

Chair Beigel pointed out that was why Member Parker used a date range.

Chair Beigel asked Member Bauer if she wanted to add to the motion “restoring all the hours of sick leave,” and did she want to add the word all to her motion.

Member Bauer stated she just wanted a little more clarity, as they had no timesheets to reference, and the Employer was not present.

Member Parker’s motion was amended and resubmitted. and seconded by Member Thompson, so that it stated: Due to the lack of Representation and objection from the Agency and considering Officer Jesse Haines testimony the motion amended to grant the Grievance, #7242 restoring all the hours of sick leave, between May 3rd, through May 10, 2020, to the Employee based on the email correspondence submitted into evidence from Dr. Michael Minev related to COVID protocol that did not reflect that the Employee met the criteria for quarantine that would result in using personal sick leave.

Member Thompson seconded the motion.

The motion carried unanimously.

FINDINGS OF FACT

Based upon the testimony of the witnesses, the arguments made by the parties, the briefs, evidence, and documents on file in this matter, the EMC makes the following findings of fact. All findings made are based upon a preponderance of the evidence.

10. The Grievant was a non-exempt State of Nevada Employee.
11. The Grievant was employed by NDOC as a Correctional Officer on May 3, 2020.
12. The Grievant traveled outside of Nevada for approximately two days in April of 2020 but had been back in Nevada 7 days before May 3, 2020.
13. The Grievant reported for work with NDOC on May 3, 2020.
14. Soon after reporting to work the Grievant was contacted, told to leave and self-quarantine for 14 days. NDOC told the Grievant he was to self-quarantine because he had traveled out of state.
15. The Grievant was required to use 40 hours of his sick leave as a result of self-quarantining.
16. Dr. Minev, NDOC’s Medical Director, had provided NDOC guidance via email concerning self-quarantining, and his email stated that NDOC Employees who self-quarantined due to COVID were expected to use sick leave during the self-quarantine.
17. Dr. Minev’s email stated that an employee would be required to self-quarantine for 14 days if the Employee:
 - Had tested positive for COVID 19;
 - Was pending test results for COVID 19 currently;

- Displayed symptoms of fever of 100.4 or greater and shortness of breath or dry coughing.
18. On May 3, 2020, the Grievant was suffering from none of the symptoms listed in Dr. Minev's email requiring that an Employee self-quarantine for 14 days.
 19. Dr. Minev's email also stated that if an Employee went on quarantine, he or she would need to use and exhaust their compensatory and sick leave first, and then annual leave; administrative leave would be approved by NDOC Human Resources on a case-by-case basis.
 20. The Governor's Travel Advisory dated March 31, 2020, urged Nevadans who had been traveling out of state to self-quarantine and monitor their health upon returning from travel.
 21. The direction in the Governor's March 31, 2020, Travel Advisory was not mandatory.
 22. The Governor's Emergency Declaration has later put into regulation an existing regulation, NAC 284.589.
 23. NAC 284.589(5) states: To the extent not already covered in subsection 4, during any period in which a state of emergency or declaration of disaster has been proclaimed pursuant to NRS 414.070, an Appointing Authority may grant administrative leave with pay to an Employee for purposes related to health and safety.
 24. NDOC had been granting at least some of its employee's administrative leave when they were told to stay home after traveling out of state, rather than requiring the Employee to use the Employee's sick leave or other leave.
 25. NDOC failed to respond to Grievant at the Step 3 Level, and NDOC failed to appear at Grievant's hearing.

CONCLUSIONS OF LAW

10. A Grievance is any act, omission, or occurrence which an Employee who has attained permanent status feels constitutes an injustice relating to any condition arising out of the relationship between an Employer and an Employee. NRS 284.384(6).
11. For this Grievance, it was Grievant's burden to establish by a preponderance of the evidence that NDOC abused its discretion in requiring him to use his sick leave, rather than allowing the use of administrative leave for the period of May 3, 2020, through May 10, 2020.
12. Pursuant to NDOC Medical Director Dr. Minev's email, there were certain criteria that NDOC Employees were to meet if NDOC were to require the Employee to self-quarantine for 14 days.
13. The Grievant did not meet the criteria in Dr. Minev's email for requiring the 14-day self-quarantine.
14. As the Grievant did not meet NDOC's criteria for self-quarantine it was arbitrary and capricious for NDOC to require Grievant to self-

quarantine using his sick leave, instead of being allowed to use administrative leave.

15. The Conclusions of Law that are more appropriately Findings of Fact shall be deemed Findings of Fact.

DECISION

Grievance #7242 is hereby **GRANTED**. NDOC is directed to restore all the hours of Grievant's sick leave used between May 3, through May 10, 2020, to the Grievant based on the email correspondence submitted into evidence from Dr. Michael Minev related to COVID protocol that did not reflect that the Grievant met the criteria for quarantine that would result in using personal sick leave.

MOTION: Move to grant the Grievance due to the lack of Representation and objection from the Agency and considering Officer Jesse Haines testimony the motion amended to grant the Grievance #7242, restoring all the hours of sick leave, between May 3rd, through May 10, 2020, to the Employee based on the email correspondence submitted into evidence from Dr. Michael Minev related to COVID protocol that did not reflect that the Employee met the criteria for quarantine that would result in using personal sick leave.

BY: Member Parker

SECOND: Member Thompson

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

1. **Discussion and possible action related to the Motion to Dismiss, submitted by the Department of Public Safety, supporting documentation, and related oral argument, if any. Possible action may include denying the Motion to Dismiss, or granting the Motion to Dismiss and consequently dismissing the Grievance, or any combination of those possible actions for Grievance #6967, Dana Thomas Department of Public Safety – Action Item**

Chair Beigel opened the Committee up for discussion.

This correspondence is concerning the above-entitled Grievance and the Motion to Dismiss submitted to the Employee Management Committee ("Committee") by the State of Nevada Department of Public Safety ("DPS").

The Committee is authorized to consider motions to dismiss and corresponding documents pursuant to NAC 284.695(1), which allows the Committee to answer a request to consider a Grievance without a hearing if the matter is based on a previous Committee decision or if the matter does not fall within the Committee's jurisdiction.

The referenced motion to dismiss was heard by the Committee³ on May 6, 2021. Mr. Brandon Price (“Senior Deputy Attorney General”) represented the Department of Public Safety (“DPS”). Dana Thomas (“Ms. Thomas”) was represented by Tyson D. League, Esq. of Hutchison & Steffen, PLLC (“Mr. League”).

Mr. Price argued in substance that Ms. Thomas was a dispatcher for DPS who filed a Grievance contesting a written reprimand she had received despite admitting to violating DPS policy and despite the fact, the Grievant received the minimum amount of discipline she could have received.

Mr. Price noted that Ms. Thomas was requesting a reduction in her written reprimand to an Oral Warning or Letter of Instruction (“LOI”), but that an LOI was not even disciplining under NRS Chapter 284.

Mr. Price stated that DPS filed a motion to dismiss because there was nothing for the EMC to decide, as the Grievant could not establish that she suffered any sort of injustice that was grievable.

Mr. Price noted that the facts involved two separate incidents. He stated during Ms. Thomas’ shift as a dispatcher on November 2, 2019, a trooper initiated a traffic stop where Ms. Thomas answered the trooper’s call, conducted a criminal background check on the stopped suspect, and the Grievant failed to provide the trooper with accurate information concerning the suspect’s criminal background.

Mr. Price noted that all proper background checks were extremely important for the trooper’s safety and to ensure that a subject was charged with the appropriate offenses if further action was taken.

Mr. Price stated that the criminal database showed the subject had a felony warrant and a protection order from North Carolina, and that Ms. Thomas negligently failed to provide the trooper with this important information.

Mr. Price noted that approximately two weeks later, on November 15, 2019, Ms. Thomas again failed to properly perform her job duties.

Mr. Price noted that while the Grievant was working as a dispatcher, Ms. Thomas received a call from a witness who said a woman fell out of her car and lost control of it, and in the middle of the call Ms. Thomas received a personal call, and instead of waiting until after the call was finished she put the call from the woman on hold, took the personal call and when she came back on the line the witness reported additional information that was extremely important so that DPS could provide an

³ The Committee members present at the hearing representing a quorum were as follows: Pauline Beigel (NDOT), who chaired the meeting; Sherri Thompson (DETR), Stephanie Parker (UNR) and Jennifer Bauer (SPCSA). Counsel for the Committee, Deputy Attorney General Robert A. Whitney, was also present, as was EMC coordinator Breece Flores and EMC Admin. Clerk Ivory Wright.

appropriate response, but Ms. Thomas failed to report that additional information and provide it to the trooper.

Mr. Price stated as a result of these two separate incidents DPS issued a written reprimand to Ms. Thomas, charging her with neglect of duty, as a class II offense under DPS' disciplinary policy.

Mr. Price stated under DPS' Disciplinary Policy, it was noted the violation the Grievant was charged with had as a range of discipline with the minimum being a written reprimand and the maximum as suspension.

Mr. Price stated that Ms. Thomas admitted in her Grievance to committing the misconduct.

Mr. Price also stated this event was not the first time Ms. Thomas had been disciplined for neglect of duty, and that in August 2019 Ms. Thomas was suspended without pay for neglecting her duties.

Mr. Price noted that for the second offense of neglect of duty the punishment under DPS' disciplinary policy ranged from a suspension to demotion.

Mr. Price noted that it was undisputed that DPS gave the Grievant the minimum discipline it could have, and that decision was based on the fact that this was the Grievant's second offense she could have been facing suspension or demotion.

Mr. Price noted Ms. Thomas could have been disciplined separately for the two incidents, but DPS decided to issue one written reprimand for both offenses combined.

Mr. Price stated that under NRS 284.384 the EMC had the authority to hear a Grievance, which was an act, omission, or occurrence which constituted an injustice relating to the employment relationship, and that the EMC heard cases that were subject to adjustment, and that in this Grievance there was nothing for the EMC to adjust because Ms. Thomas did not suffer any sort of injustice that was grievable.

Mr. Price noted that there were three ways Ms. Thomas could have suffered an injustice by receiving a written reprimand that would potentially warrant a hearing, but under the undisputed facts, she could not demonstrate any of them.

Mr. Price stated that Ms. Thomas could have shown that she did not commit the offense she was charged with, she could have shown that DPS violated a statute, regulation, or policy, and the third way was that the discipline imposed could be shown to be unreasonable.

Mr. Price stated concerning the first possibility, of whether an offense was committed, this was not an issue because Ms. Thomas admitted in her Grievance, she had committed the misconduct, nor had Ms. Thomas stated facts showing that DPS violated any statute, regulation, or policy in issuing the written reprimand.

Mr. Price noted that the EMC had held in prior decisions that it would generally not put itself in the place of an Appointing Authority, but the EMC would look to whether the Appointing Authority had complied with relevant statutes, regulations, and policies.

Mr. Price noted that Ms. Thomas did not allege in her Grievance that DPS had violated a statute, regulation, or policy, and she had not done so in her Opposition.

Mr. Price noted that Ms. Thomas did not demonstrate the third element, that the discipline was unfair or unreasonable, and pointed out that for an agency to ensure consistency and fairness concerning discipline, it had a disciplinary policy with a matrix that set forth the discipline imposed for certain violations, and so it was the policy that ensured consistency and fairness was followed, and that in the present case DPS followed its disciplinary policy in issuing a written reprimand.

Mr. Price also noted that an Agency's Disciplinary Policy was required to be approved by the Personnel Commission and that the Personnel Commission had approved the DPS Disciplinary Policy, as well as the ranges of discipline in that policy.

Mr. Price argued if the Agency imposed a level of discipline that fell within the disciplinary matrix for the amount of discipline that was reasonable for the violation, then the discipline was reasonable as a matter of law, and DPS had provided legal authority stating this fact.

Mr. Price also argued that because Ms. Thomas received the minimum degree of discipline as outlined in DPS policy the degree of discipline was reasonable as a matter of law, and that the Nevada Supreme Court had held in *Taylor v. Department of Health and Human Services*, that only Employers had the power to proscribe the actual degree of discipline imposed on permanent classified Employees, and that if the EMC were to hold a hearing in this matter and decide that Ms. Thomas should be issued an oral warning or LOI, it would be acting outside its authority and in violation of Nevada law.

Mr. Price argued that Ms. Thomas was essentially asking the EMC to deviate from DPS' Disciplinary Policy, which would result in her being treated more favorably than other Employees who were disciplined at DPS for committing a Class II offense.

Mr. Price argued there was no point in having a hearing as there was nothing for the EMC to adjust.

Mr. Price stated that DPS requested that the EMC deny Ms. Thomas' Grievance without a hearing.

Mr. League argued that Ms. Thomas had believed that injustice did occur with her discipline.

Mr. League noted that within the dispatch center in which Ms. Thomas was employed in Carson City, NV, the Employees were required to do the jobs of multiple people, and cleared warrants, performed administrative tasks and dispatch work and that at times there were only two people present to cover the entire workload of the office.

Mr. League also noted that other individuals had committed similar acts, if not more egregious offenses on a near-daily basis and were given no discipline.

Mr. League stated that Ms. Thomas was not disputing the facts which led to her Grievance, but that Ms. Thomas did not believe she had been treated equally, and that if all of the Personnel in her office were to be disciplined per DPS's Policy and Procedure all office staff would be suspended.

Ms. Thomas testified that the subject whose warrant she missed did not get away.

Ms. Thomas also stated that Ms. Brueggemann had been led to believe she had already been cautioned twice through LOI's about similar past behaviors when she had not.

Ms. Thomas also stated that the Carson City Office was the smallest and handled daily 14 different agencies' telephone and warrants while dispatching, in addition to other responsibilities. Concerning the personal phone call, she disputed the facts as noted in the Grievance.

Ms. Thomas also stated in substance that other dispatchers in her office took and made personal phone calls.

Mr. Price objected to Ms. Thomas's testimony and noted the purpose of the hearing was to address legal arguments, and that Ms. Thomas was moving into the facts of the case, which were not relevant.

Chair Beigel objected was sustained.

Mr. Price further noted that Ms. Thomas had the chance to provide facts to show disparate treatment in her Grievance and in her motion to dismiss, and she had provided no facts concerning such an allegation.

Mr. Price also stated that the number of dispatchers at the Carson City office was not at issue, and it was never raised in the Grievance.

Mr. Price argued that Ms. Thomas had shown no reasons that would lead to the reversal of her Grievance in the matter, and so there was no point in moving to a hearing, as under the undisputed facts there was no way to overturn the Grievance.

Mr. Price also noted that each disciplinary matter was handled on an individual basis, as each situation involved unique facts and mitigating circumstances, which Ms. Thomas would not be privy to.

Mr. Price stated that Ms. Thomas admitted to committing the misconduct for which she received the reprimand and that Ms. Thomas was given the minimum amount of discipline she could have received for the Class II Offense.

Mr. Price stated in his closing statement by requesting on behalf of DPS that Ms. Thomas' Grievance be decided without a hearing and that EMC deny her Grievance.

Chair Beigel opened the Committee for discussion. The EMC then began to deliberate.

Chair Beigel stated that she was inclined to grant the motion based on everything that was presented.

Member Parker agreed with Chair Beigel and stated that with the admission, with the discipline imposed being the least possible, and with the information provided she saw nothing that would warrant not granting the motion.

Member Bauer stated that she began thinking about the difference between granting a motion to dismiss vs. denying the motion to dismiss and not hearing the Grievance and weighing in and deciding on the Grievance, so when she thought about a motion to dismiss in an administrative proceeding she thought about jurisdiction, venue and whether the Grievance could be answered without a hearing based on prior decisions.

Member Bauer stated she thought that the EMC was the proper venue, that it had jurisdiction, and that if the Grievance were heard the EMC could render a decision.

Member Bauer stated that she was leaning towards granting the motion because she had read and heard where the Grievant did not argue that the work performance misconduct had occurred so that this demonstrated

there was warranted discipline, and reducing the discipline would essentially eliminate it.

Member Bauer stated that she thought that a previous decision had been made that there was not an injustice suffered because Ms. Thomas admitted to the behavior which warranted discipline, so that would justify support for a motion to dismiss.

Chair Beigel stated that she agreed with Member Bauer, especially since the EMC did not have the right to say if it were their Employee, they would have given a different level of discipline.

Member Thompson agreed with the other three EMC members and was leaning towards granting the motion to dismiss.

Chair Beigel moved to grant the motion to dismiss Grievance #6967, for Dana Thomas, pursuant to NRS 284.020 The Agency and Department heads had been granted authority to manage affairs of their department as they saw fit, and there were no disputed facts regarding the incident itself.

This motion was not seconded and died.

Chair Beigel made a second motion to dismiss Grievance #6967, based on NAC 284.695, based on the prior decision, Grievance #1674, *Victoria Schmader*, and also the fact that agencies could manage their Employees as they saw fit per NRS 284.020.

Member Parker seconded the motion, which carried unanimously.

MOTION: Chair Beigel made a second motion to dismiss Grievance #6967, based on NAC 284.695, based on the prior decision, Grievance #1674, *Victoria Schmader*, and also the fact that agencies could manage their Employees as they saw fit per NRS 284.020.

BY: Member Beigel

SECOND: Member Parker

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

2. Discussion and possible action related to Grievance #7380, Scot Jones Department of Corrections – Action Item

Chair Beigel opened the Committee for discussion.

Member Thompson stated after reviewing the Grievance she thought this was a case where the Agency could run their affairs as they see fit, and the EMC didn't have jurisdiction to hear it.

Member Thompson stated the EMC did not have firsthand knowledge of how the Agency is run nor the tools it uses to manage its staff. The EMC didn't have the right to tell the Agency how to run its affairs.

Member Thompson stated it sounded very similar to previous cases the EMC had heard prior where it was denied based on that same circumstance.

Member Bauer stated she agreed with Member Thompson this Grievance falls under the ability of the Agency to run their affairs as they see fit, however, she recalled last month the EMC decided to move a Grievance to hear so the Grievance could be heard. She stated it was decided the EMC could give advice or a recommendation to the Agency.

Member Bauer stated this Grievance was very similar to the decision the EMC had made the month prior regarding a training.

Member Parker stated she agreed with Member Bauer to move the Grievance to hear because she didn't think the Grievance was enough information to decide.

Chair Beigel noted the definition of a Grievance is any condition arising from the relationship of the Employer and Employee. She stated she felt it could fall into that but references outside of that definition were in the Grievance.

Member Parker stated in the Grievance it was referenced an AR but that some of the terminology the Agency used internally she was not sure of and would be willing to listen to her members on their expertise and reference having heard the cases before.

Member Parker stated the Agency can run as they see fit, she thought that the EMC could review if the policy was followed.

Chair Beigel stated she agreed with Member Parker.

Member Thompson stated she also agreed and saw the concern of a safety issue and she could see moving this Grievance forward to hearing.

Member Parker stated she was ready to make the motion but was not sure of the verbiage to be used.

Member Parker motion to move Grievance #7380 for Scot Jones forward to schedule it to hear to determine if the Agency's policy or law has been violated to include AR 413.01, AR 105.01, and AR 105.

Member Bauer stated with the verbiage used in the motion did the EMC need to list the ARs.

Member Bauer stated she did not want to exclude a regulation without hearing all the facts or limit the ability if the EMC did hear the Grievance.

Member Bauer stated she seconded the motion.

Chair Beigel asked for discussion, there was none so she called for a vote.

MOTION: Move Grievance #7380 for Scot Jones forward to schedule it to a hearing to determine if the Agency's policy or law has been violated to include AR 413.01, AR 105.01, and AR 105.

BY: Member Parker

SECOND: Member Bauer

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

3. Discussion and possible action related to Grievance #7401, Bradford Nash Department of Corrections – Action Item

Chair Beigel opened the Committee for discussion.

Member Bauer stated the substance of the Grievance was not an injustice suffered looking for remedy but allegations of hostile work environment and retaliation and would not fall to the EMC venue.

Chair Beigel stated she agreed with Member Bauer.

Member Parker stated she agreed with the members and did not think the EMC had jurisdiction to hear or grant remedy to this Grievance.

Member Thompson stated she also agreed with the members and the EMC was not the proper venue for this Grievance.

Chair Beigel stated the EMC moves to deny Grievance #7401 for Bradford Nash without a hearing because the issue does not fall within the jurisdiction of the EMC and there are other venues to refer the Grievant to the EEO Department to seek remedy.

Member Bauer seconded the motion.

MOTION: Moves to answer Grievance #7401 for Bradford Nash without a hearing based on the EMC lacks jurisdiction to grant remedy to the grievance but could be found in another venue.

BY: Chair Beigel

SECOND: Member Bauer

VOTE: The vote unanimously in favor of the motion.

4. Public Comment

Mr. Jesse Haines stated the EMC did have the jurisdiction to make recommendations to the Governor for safety and security measures.

5. Adjournment

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