

Brian Sandoval
Governor



Mark Evans
Chair

Stephanie Canter
Co-Vice-Chair

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STATE OF NEVADA
EMPLOYEE-MANAGEMENT COMMITTEE
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Meeting Minutes of the Employee-Management Committee
December 12, 2013

Held at the Bryan Building, 901 S. Stewart Street, Conference Room, 2nd Floor, Carson City, Nevada, and at the Grant Sawyer Building, 555 E. Washington Avenue, Room 1400, Las Vegas, Nevada, via videoconference.

Committee Members:

Management Representatives	Present
Mr. Mark Evans–Chair	X
Ms. Mandy Payette–Co-Vice-Chair	X
Ms. Bonnie Long	
Ms. Claudia Stieber	
Ms. Allison Wall	
Ms. Michelle Weyland	X
Employee Representatives	
Ms. Stephanie Canter–Co-Vice-Chair	X
Ms. Donya Deleon	
Mr. Tracy DuPree	
Mr. David Flickinger	X
Ms. Turessa Russell	
Ms. Sherri Thompson	X

Staff Present:

Ms. Katie Armstrong, Deputy Attorney General
Ms. Carrie Lee, EMC Coordinator
Ms. Nadege Barthelmy, Hearing Clerk

I. CALL TO ORDER

Chair Mark Evans: Called the meeting to order at 9:07 a.m. He reviewed some issues concerning the audio and video-recording equipment and procedures. He indicated that he might be taking items on the agenda out of the listed order.

II. ADOPTION OF AGENDA

Action Item

MOTION: Move to approve the adoption of the Agenda
BY: Mandy Payette
SECOND: David Flickinger
VOTE: The vote was unanimous in favor of the motion

III. PUBLIC COMMENT

Read into record by **Chair Evans:** No vote or action may be taken upon a matter raised during public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020) Comments will be limited to five minutes per person and persons making comment will be asked to begin by stating their name for the record.

Chair Evans: Asked if there was any public comment and there was none.

IV. APPROVAL OF MINUTES FOR SEPTEMBER 19, 2013

Action Item

MOTION: Move to approve the minutes of September 19, 2013
BY: Michelle Weyland
SECOND: Stephanie Canter
VOTE: The vote was unanimous in favor of the motion

V. COMMITTEE INTRODUCTIONS, MEETING OVERVIEW AND UPDATES

Members introduced themselves and their affiliations and Chair Evans welcomed everyone to the meeting. Chair Evans took the opportunity to make some comments regarding the grievance process, noting it is a conflict resolution process. He noted that conflicts were best solved at the lowest level and allowed the parties to come up with a mutually agreeable solution and subsequently build a good working relationship. He stated that the process offered opportunities for the employee and the agency to meet and these included: the employee having 20 working days before filing the grievance to work it out with the agency and all the steps along the way; mediation; after the submission of the grievance to the EMC (Employee-Management Committee) either party could ask for a resolution conference giving the parties the opportunity to resolve the grievance.

He said that at the meeting they were all there to hear the employee and to listen to the agency's perspective. He reminded the parties that after the Committee gave its decision they would still need to maintain an effective working relationship and to that end asked the parties to keep the exchanges respectful. He also reminded all parties, including those providing legal representation that the Committee members were not lawyers but state employees appointed by the governor to provide the best possible decision based on their experience and knowledge and stated once again that he would appreciate mutual respect from all to move the process forward smoothly.

**VI. ADJUSTMENT OF GRIEVANCE OF WESLEY MATTICE, NEVADA
DEPARTMENT OF CORRECTIONS Action Item**

Chair Evans: Noted that there were some disclosures. **Michelle Weyland:** Indicated that prior to being employed by the Department of Health and Human Services (DHHS) she was employed at the Department of Corrections (DOC) Inmate Services. She said she did not feel that that would cause any issues with regard to serving impartially on the Committee. **Chair Evans:** Disclosed that at the time Mr. Mattice had filed his grievance he was employed at the Division of Human Resource Management (DHRM) and recalled a conversation with Mr. Mattice and another party about the grievance but could not recall details. He said it would have no impact on his ability to give either side a fair hearing.

Chair Evans: Stated as they proceeded they would be asking individuals who had made statements to come up, state their name, address and occupation for the record. He added that as the Committee hears the case the members would be asking questions and they would deliberate and make a decision before everyone and they would then provide that decision in writing within 45 days. He noted that both sides had submitted written packets. He asked that if there were any objections to any of the materials in the written packets. One party indicated no and the other noted he would decide later whether some materials were relevant.

Chair Evans: Asked if they could hear introductions for both sides. **Thomas J Donaldson:** Stated that he was acting on behalf of Associate Warden, Wesley Mattice (AW Mattice). **Wesley Mattice:** Introduced himself as the Associate Warden at the Warm Springs Correctional Center (WSCC). **Dominika Morun,** Attorney General's Office: Stated that she was acting on behalf of the Nevada Department of Corrections (NDOC). **Susie Bargmann:** Introduced herself as the Human Resource Manager at the NDOC. **Chair Evans:** Asked if there were any motions to consider from either side. **Thomas Donaldson:** Indicated they had all been denied. **Chair Evans:** Asked who the witnesses were for each side. **Thomas Donaldson:** Responded AW Mattice. **Dominika Morun:** Responded that there was Deputy Director E.K. McDaniel, Former Warden Don Helling, Warden Smith and as a rebuttal witness, Susie Bargmann. **Chair Evans:** Noted they had called from the DHRM, Peter Long. He asked all witnesses to stand and swore in all the witnesses.

Chair Evans: Explained the process. He said the employee or their representative gives a brief opening statement including the nature of the grievance, what they intend to prove and the intended resolution. He said then the agency would also provide their statement. He stated they would then hear again from the employee providing any evidence and then the agency would also provide evidence. He noted at that point each side would be given the opportunity to do a closing statement. He asked the representative of the employee to begin.

Thomas Donaldson: Referred to EMC Decision 35-12 which initially denied AW Mattice's grievance which was heard on July 10, 2012. He noted that the decision was based on Decision 36-12 issued subsequent to the first decision. He stated they had gone to district court on a petition for judicial review of that decision and the judge issued an order dated July 24, 2013, granting the petition for judicial review, remanding the matter back to the EMC to conduct the hearing. He stated they had concluded that the underlying circumstances of the grievance were not analogous to those of the other associate wardens and shown in Decision 36-12.

He indicated that the issue was whether AW Mattice had met the five factors in NAC 284.218 (Exhibit 3). He said they would be presenting evidence regarding AW Mattice's testimony and other exhibits showing that he had met all the criteria. He said they would also present evidence from former Warden Don Helling. He said they were asking the Committee to grant his grievance awarding standby pay retroactive to the time that he was promoted in January 2006. He noted that the EMC could grant the grievance subject to budget division approval which would be pursuant to NRS 284.384 subsection 3.8.

Dominika Morun: Noted that they had assembled the packet in response to the court order. She noted that the case involved a grievance of AW Mattice who is a long-term management-level employee with NDOC. She stated the grievance concerned retroactive standby pay the day he was promoted to the position in January of 2006. She confirmed that AW Mattice was a valued manager at the WSCC and performed his duties well. She said that what NDOC was denying was that he was entitled to retroactive standby pay. She said that the issue concerned NAC 284.218. She said the state provided standby pay to employees who meet the NAC 284.218 five requirements. She added that there was also a related Administrative Regulation 320. She said the first requirement was that NDOC direct the employee to remain available for notification to work; the second and third requirements required that during standby the employee be waiting to be engaged to work, in a state of readiness to report to work, the employee must *"be prepared to work if the need arises and able to work within a reasonable time"*. She referred to the administrative regulation and stated it provided that a reasonable time would be approximately half an hour. She added that the fourth NAC requirement stated that NDOC could direct the employee to carry a paging device or provide a telephone number where the agency could contact the employee for notification to work. The fifth requirement stated that the employee while on standby could use that time for personal pursuits.

She continued that in addition to the five mentioned requirements there was another NAC 284.5255 in play in addition to AR 320 that would require the employee to submit their time worked, including the standby time on timesheets. She stated that through NAC 284.5255 and AR 320 salary administration the employee would be affirming that they had met NAC 284.218 and AR 320 requirements and that the NDOC did direct them to be available for notification of work and they were prepared and ready to work if the need arose.

She stated for the period in question AW Mattice had not entered the standby hours on his timesheet making it impossible to verify, six years later, that he had met NAC 284.218 and AR 320. She stated that NDOC had directed him to remain available for notification for work during the hours but for all those times he was waiting to be engaged to work and in a state of readiness to report. She stated it was true that during that time AW Mattice had carried a cell phone, this phone might have been used for after-hours and this did not mean that during those times he was specifically directed to be on standby pay. She stated that the evidence would show that AW Mattice had in use a cell phone after hours and that he was not directed to be on standby during all those hours and subsequently was not earning stand by pay. She added that evidence would show that AW Mattice did not put the time on his time sheets that he was now claiming.

She added that this grievance was similar to a previous case involving an associate warden and retroactive standby pay. She noted it was called the Patterson grievance and had similar circumstances where the hours were not included on timesheets. She said the EMC had denied that grievance because the associate wardens had not shown they had met NAC 284.281 requirement and because they had not properly requested compensation on their timesheets.

She noted that the second issue was timeliness. She added that evidence would show AW Mattice's grievance was untimely under the State of Nevada grievance procedure, NAC 284.5255 which required AW Mattice to file a standby status grievance in early 2006 when he first would have received a paycheck as an associate warden that had not included any standby hours. She said that AW Mattice had argued that this untimeliness should be excused because NDOC through a former Warden Don Helling had advised him not to expect reimbursement for standby status. She said Mr. Helling was present and would testify that he could not recall making that statement and that he would also not have advised an associate warden to not expect standby pay. She confirmed that the position of NDOC was that any such statements would not provide AW Mattice with additional time to file a grievance. She stated that the State of Nevada required employees to file grievances within 20 days in NAC 284.218 explaining employee entitlement to standby pay which was available for all employees back in 2006 when AW Mattice first came to the position. She stated that the EMC had previously declared the Nash grievance untimely when retroactive pay was also sought.

She noted that they would also hear testimony from AW Mattice's supervisor Warden Smith providing an additional example of how the grievance was untimely. She

concluded that NDOC would show that AW Mattice's grievance for standby pay did not have merit and secondly was untimely.

Chair Evans: Reminded the parties that Committee members reviewed the packets carefully so it would not be necessary to read them in detail. AW Mattice was called to the witness stand and signed in.

Thomas Donaldson: Asked AW Mattice details about his employment. **AW Mattice:** Confirmed he was the Associate Warden at WSCC and started with NDOC on September 29, 1985, and was promoted to his current position in January of 2006. He confirmed that at the time the warden was Don Helling at the Northern Nevada Correctional Center (NNCC). He stated that he was issued a state cell phone and was directed to carry the phone off-duty in the event that he was to receive a notification as per the Administrative Regulations and respond to a list of various circumstances. **Thomas Donaldson:** Referred to the packet and noted for the Committee members that the grievance was Exhibit 1. He referred to the reference of Administrative Regulation 121 and asked AW Mattice if that was the administrative regulation. **AW Mattice:** Confirmed yes, but also said it was no longer in effect.

Thomas Donaldson: Confirmed it had been replaced by AR 332. He asked members to refer to Exhibit 4 and noted it superseded AR 121 effective March 19, 2013. He referred to the reporting responsibilities in AR 332.01 and asked if they were the responsibilities he had been referring to. **AW Mattice:** Confirmed yes. **Thomas Donaldson:** Discussed some of the responsibilities on the list with AW Mattice and the types of response. He asked AW Mattice if employees would have to report any of the incidents on the list up their chain of command by the end of their shift. **AW Mattice:** Confirmed yes or be disciplined and that also included him in the chain of command in his position of associate warden.

Thomas Donaldson: Asked what NOTIS stood for. **AW Mattice:** Responded it was a computer system, an acronym that stood for Nevada Offender Tracking Information System and was used for all report taking, accounts and incidents. **Thomas Donaldson:** Asked if the system was used for listing any type of the mentioned incidents as well. **AW Mattice:** Confirmed yes. **Thomas Donaldson:** Referred to Page 3, subsection 4 which stated that the institution or facility administrator should ensure that an incident report was completed and asked if that was his responsibility. **AW Mattice:** Responded it was his or the shift commander. **Thomas Donaldson:** Asked if there were any other duties he would have that would necessitate him being contacted off-duty on the state cell phone. **AW Mattice:** Responded it was the intent of the administrative regulation to take care of state business and critical incidents.

Thomas Donaldson: Asked if he recalled Warden Helling saying he should be prepared to respond 24/7. **AW Mattice:** Responded yes, even before the administrative regulation. He said at that time he was at the Stewart Conservation Camp and had a cell phone. He said at the time he was on standby. He said the camp was next to the NNCC and staff could respond from next door also. He said he did not claim any standby at that time

because they could respond from next door. **Thomas Donaldson:** Asked if he recalled having a conversation with Warden Helling about standby pay. **AW Mattice:** Responded yes and stated it was when he took possession of the cell phone for the position of associate warden. He said he was given the cell phone and told as usual, you are on standby 24/7 and do not expect to be paid for it as it was part of the position. **Chair Evans:** Asked the witness what had been his understanding of what constituted being eligible for standby pay. **AW Mattice:** Responded his understanding of being on standby was his direction and the administrative regulation and having his cell phone number on the recall roster where staff would be directed to call him at his home number then cell phone number. **Thomas Donaldson:** Asked if Warden Helling had directed him to remain available to work when he had worked at NNCC. **AW Mattice:** Responded yes and he was prepared to work and had responded many times within a reasonable time as he lived close by.

Sherri Thompson: Asked if he got paid when he responded. **AW Mattice:** Responded not always. He noted on escapes they would draw from an emergency fund and they could claim overtime. He said sometimes when responding it was taken as flex time. He said NOTIS would have been full of entries noting that the associate warden had responded. In response to a question from Sherri Thompson he said he noted it on the timesheets in some instances. In response to a question from Chair Evans he noted that NOTIS would state when he had come in. **Chair Evans:** Asked in the case of flex, was that documented on the timesheets. **AW Mattice:** Responded that flex time was not noted on timesheets. **Thomas Donaldson:** Asked if he was allowed to use off duty time for personal pursuits. **AW Mattice:** Responded yes. **Thomas Donaldson:** Asked why he had not included standby pay on the timesheets from January 2006 to May 2012 when the grievance was filed. **AW Mattice:** Responded that it was due to Warden Helling's direction. He stated that there were two other reasons, the fact he was on probation and he was newly promoted. He also responded that it was a paramilitary-type organization and you were expected to do what you were told and to do otherwise would be considered insubordination.

Thomas Donaldson: Stated that on Page 2 of the grievance, Exhibit 1, it showed it was filed on May 17, 2012, and it was then submitted to step one to the warden at Warm Springs, Gregory Smith. **AW Mattice:** Responded yes and he had filed the grievance due to several things. He said just prior to the filing, a Lieutenant Ward at NNCC had requested standby pay for a restitution center in Reno which was similar to the conservation camps. He said he had told him, no, that it was all part of the job. He said he later received an email from Lieutenant Ward with information saying he was correct in asking and had sent a spreadsheet showing all 15 associate wardens in the state with a breakdown of their standby pay. The spreadsheet was shown as the last page of Exhibit 1. Lieutenant Ward advised the information had come from a shared drive. He explained that on the computer network each facility would have a shared drive with forms, etc. He said after reviewing the information he had called Susie Bargmann and asked about standby pay. He said Susie Bargmann stated there were several grievances in the south by some associate wardens who she felt were trying to abuse the system. He said he started to become aware after talking with Lieutenant Ward, Warden Smith, and a Sgt. Lytle

who was asking why he was not claiming for his standby as not doing so would affect his retirement and bottom line. Sgt. Lytle had also suggested that he look at Transparent Nevada. He said it was a website that showed all public employees and their pay. He noted that he had highlighted the spreadsheet in yellow for the associate wardens. He added he had highlighted himself and Cole Morrow in red as the only two associate wardens who had not received standby pay. He reviewed the columns, detailing budget, institution numbers, status, appointment dates, fiscal year, hours, etc. of the spreadsheet with Thomas Donaldson. **Thomas Donaldson:** Stated that on the spreadsheet the column headed as, Standby Pay Resumed, it showed dates all in 2011 or 2012 with the exception of AW Mattice and Associate Warden Morrow.

Thomas Donaldson: Asked if he had been contacted by phone after filing the grievance. **AW Mattice:** Responded that soon after he received a call from Deputy Attorney General Ann McDermott. He said she had asked him to retract the grievance. He said she said that the spreadsheet information was confidential and he had not been authorized to include that in his grievance. He said she stated that there was a possibility he was in violation of some administration regulation. He said her tone was threatening. He explained that the spreadsheet was on a shared drive in a common area and had been emailed to him by another employee. He confirmed he did not retract the grievance. **Thomas Donaldson:** Asked if he had been investigated or disciplined for using the spreadsheet. **AW Mattice:** Responded not as far as he knew.

Thomas Donaldson: Referred to mention of the previous Administrative Regulation 405.206 in the grievance and asked about this. **AW Mattice:** Responded it concerned the use of force and the use of chemical agents. **Thomas Donaldson:** Referred to Page 2 in which it was noted that Warden Smith had denied the grievance and found it as untimely. He asked if he was familiar with the regulation regarding the filing of grievances. **AW Mattice:** Responded yes. **Thomas Donaldson:** Asked about the period of 20 days, in that to clarify, it was 20 days from when a person would learn of a problem. **AW Mattice:** Responded that was correct and he had learned about this problem on May 9, 2012. **Thomas Donaldson:** Said that he then filed his grievance on May 17, 2012. **AW Mattice:** Responded that was correct and he believed that he had complied with the NAC.

Thomas Donaldson: Referred to letters to the other associate wardens in the Step 2 response after the grievance was denied by Deputy Director McDaniel. He asked about a letter he had received from Director Cox. **AW Mattice:** Noted that after filing the grievance and speaking with Susie Bargmann he said he wanted more information about the other grievances and the issues. He said he found out that the grievances had already reached the EMC level. He said he attended the EMC hearing with regard to the Patterson grievance. He stated that in the hearing he found out that there had been a meeting between Patterson, the associate wardens and Director Cox and he had given them a letter. He confirmed he had not been part of that meeting nor had he received a letter.

Chair Evans: Asked if AW Mattice had received any standby pay since the filing of the grievance. **AW Mattice:** Responded yes, starting in mid-May. He said to him this

showed that the state was conceding that he did qualify for standby pay and he added that there had been no changes in his duties. **Stephanie Canter:** Asked if he was received standby pay 24/7. **AW Mattice:** Responded that he was being directed to split up the standby pay between him, Warden Smith and the lieutenant for NNRC (North Nevada Restitution Center) with each rotating on a two-week basis. He said that when they would be on standby pay it would be for the 16 hours or the 24 hours that you would not be on duty. He said it appeared that there was some issue regarding who would receive the money. He stated he felt it should be built into the budget. He said the Warden should not qualify for standby pay as his position is unclassified. He commented on the suitability of the lieutenant from NNRC being on standby as he had never worked Warm Springs. **Mandy Payette:** Asked if he was documenting on his timesheet. **AW Mattice:** Responded yes. **Mandy Payette:** Referred to the issue of flex time when AW Mattice had stated earlier that flex time would not be reflected on timesheets. She referred the employer's packet, number 136 and said that on that timesheet flex time had been shown. She asked about the difference in circumstances. **AW Mattice:** Responded that it had been noted because it was in the notes reflecting an incident but was not documented in terms of hours worked.

Thomas Donaldson: Referred to Exhibit 2, a letter dated January 13, 2012 from NDOC Director Cox. He asked AW Mattice if he had seen the letter prior to filing the grievance. **AW Mattice:** Responded no. **Thomas Donaldson:** Stated that Director Cox did not appear to be aware of NAC 284 until January of 2012. He stated that the letter noted that because AW Mattice was directed to carry a telephone you would be eligible for standby pay. He asked AW Mattice if that included management and did it include him. **AW Mattice:** Responded yes. **Thomas Donaldson:** Noted that letter also stated that as wardens were unclassified they were not entitled to standby pay. **AW Mattice:** Confirmed that was correct. **Thomas Donaldson:** Stated that it appeared that from this point a policy of implementing standby pay would begin. He referred to the state's opening statement in which the warden had discussed with him about documenting standby pay in approximately January or February 2012. **AW Mattice:** Responded yes, but he did not recall the timing. **Thomas Donaldson:** Asked what he did as a result of that instruction. **AW Mattice:** Responded the warden wanted to set up a standby schedule. He said he asked questions in response to this. **Thomas Donaldson:** Asked if the warden had indicated he would be paid. **AW Mattice:** Responded yes but that did not happen until May of 2012. He added he had worked for five wardens and none had mentioned that he was entitled to standby pay. **Thomas Donaldson:** Noted that it was the responsibility of the wardens to review and approve the timesheets. **AW Mattice:** Responded correct. **Thomas Donaldson:** Stated that as a result if he should have been receiving standby pay and it was not on the timesheet then they should have taken steps to notify you accordingly. **AW Mattice:** Responded yes and no warden had ever rejected his timesheet. **Thomas Donaldson:** Asked if he had ever had a timesheet rejected to which AW Mattice responded no.

Dominika Morun: Asked from the time the NDOC promoted him to associate warden in January 2006 until the grievance in May 2012 if standby pay was earned for the time he was not on duty. **AW Mattice:** Responded yes, except for the time on annual leave or

things of that nature. He confirmed that he maintained that position as a result of the direction from Warden Helling. **Dominika Morun:** Asked if he had received the same direction from any other wardens he had worked with. **AW Mattice:** Responded that as far as Warden James Benedetti was concerned he had had no conversation on the matter. **Dominika Morun:** Asked if he had received such direction from any other wardens at the WSCC. **AW Mattice:** Responded that Warden Smith had, starting in May 2012. He stated this was done in a meeting when the warden noted that after he had come back with direction from a meeting of the wardens. At the meeting it was decided that they would institute standby and a schedule and they were to put it on their timesheets. He said the meeting occurred in approximately January or February of 2012. He confirmed that there had been no direction prior to then.

Dominika Morun: Referred to the timesheet, F/Y 2007 and noted that the number of hours varied for associate wardens. **AW Mattice:** Responded that he did not know the details as to whether it was hours or dollars. He referred to the conversation he had had with Ann McDermott and said he had been advised that the spreadsheet represented incomplete staffing. **Dominika Morun:** Stated that there appeared to be differences whether it was hours or dollars for different people. **AW Mattice:** Responded he did not know what it represented. **Dominika Morun:** Stated on the sheet there would be more than 246 hours when he was not on duty during the year. **AW Mattice:** Responded that was correct. **Dominika Morun:** Asked for clarification. She asked with the exception of leave, was he seeking standby status retroactively from January 2006 until the date of the grievance. **AW Mattice:** Responded that was correct. **Dominika Morun:** Asked if it was his position that NDOC directed him to remain available for notification to work during time he was not on active duty from January 30, 2006, until May of 2012. **AW Mattice:** Responded yes, through Warden Helling's direction and the administrative regulation. **Dominika Morun:** Referred to NAC 284.218 and asked if it required him to be prepared to work if the need arose and within a reasonable time. She asked during that period of six years had he been prepared to work if the need arose. **AW Mattice:** Responded yes he was and added when the need arose to physically respond he had never missed an opportunity. **Dominika Morun:** Asked if he had put in for call back pay when he responded. **AW Mattice:** Responded on some occasions but not all because on some he had been instructed to do flex time by the warden. He noted he would always check with his supervisor how it was to be handled. **Dominika Morun:** Referred to the occasions when he received requests to report back to work. She asked if on any occasions he had consumed alcohol or medication that might have impaired his ability to work. **AW Mattice:** Responded that he was healthy and did not take medication and regarding alcohol he stated that he would have it maybe a few times a year, normally on annual leave.

Dominika Morun: Referred to that period of years and asked if during that time he had remained within a reasonable radius of the facility. **AW Mattice:** Responded not all the time. He noted that on some occasions he would be out of town and at that time he was not on standby. **Dominika Morun:** Asked if those periods were documented. **AW Mattice:** Responded he did not know as he was off the clock during annual leave. **Dominika Morun:** Asked if anyone had ever had a conversation with him about the

difference between being on standby when he would be on annual leave versus a regular day that he would have to work. **AW Mattice:** Responded if one was on annual leave, and would go for an hour to run some errands and then work the rest of the day and you're still in the area in the evening then you would still qualify for standby. He said if one was on leave/out of town for the whole day then he did not think that you would qualify for standby. He said this direction would come from the NAC and its exceptions. He noted that he had not sought clarification from his supervisor because he had been told he did not qualify. He said his duties had not changed.

Dominika Morun: Noted that the associate wardens were scheduled in 2012. **AW Mattice:** Noted that that was due to the filing of grievances in the south. **Dominika Morun:** Referred to the spreadsheet and asked why some associate wardens were getting standby pay and he was not. **AW Mattice:** Responded that they were aware of the NAC where he was not and may have received different direction. He suggested that she could ask the associate wardens. He said that he did carry a cell phone and used it during the day, either at Warm Springs or at other facilities such as the NNRC. He gave an example of circumstances when he would also use the cell phone off duty. **Dominika Morun:** Referred to the time periods under discussion and asked if he contended they were standby hours. **AW Mattice:** Responded yes because it met the NAC.

Dominika Morun: Asked if he agreed that the proper process to request compensation would be to document it on the timesheet. **AW Mattice:** Responded yes but he had not entered the hours because he was directed not to. **Dominika Morun:** Referred to these time periods and asked if he had ever been denied standby pay. **AW Mattice:** Responded yes, by issuing that direction but not by rejecting a timesheet. **Dominika Morun:** Stated that by not documenting the hours on the timesheet he was not informing NDOC that he was entitled to compensation. **AW Mattice:** Responded no, he did not agree. He added he did not verbally advise NDOC that he was entitled to compensation. **Dominika Morun:** Said NDOC would not know he was requesting this standby pay if not advised. **AW Mattice:** Responded that he was not requesting it until mid-May and did not inform the NDOC for those six years that he was entitled to standby pay. He confirmed the standby hours were not entered as he was directed not to enter those hours and he referred to earlier testimony given of the conversation between himself and Warden Helling.

Dominika Morun: Asked if he agreed that NAC 284.218 and Administrative Regulation 120 which outlined the standby status. **AW Mattice:** Responded yes, in addition to Administrative Regulation 332. He confirmed that as an associate warden he was also responsible for knowing the code and regulations. He stated he was also responsible for following directions. He indicated that it did not occur to him that it was unfair during those six years that he was on standby but was not getting paid for it but his spouse did consider it unfair. **Dominika Morun:** Asked if he had talked to anyone about the issue. **AW Mattice:** Responded no, his concern was doing his job well. In response to a query, he confirmed that he had not approved standby pay for any subordinates until he was at WSCC. He said he was the sole associate warden there and had approved standby pay for some subordinates.

Dominika Morun: Asked if he had any documentation indicating that the NDOC had directed him to remain available for notification to work. **AW Mattice:** Responded no, other than the administrative regulations. **Dominika Morun:** Referred to Administrative Regulations 405 and 332 and asked where in those regulations it discussed standby. **AW Mattice:** Responded that their packet did not include Administrative Regulation 405. He noted that Administrative Regulation 332 gave different examples that might apply and where he might have to report to the facility. He said he had no specific documentation from NDOC requesting him to be on standby. He discussed some circumstances and noted that he would have reported for an escape and if he had failed to report for other circumstances he would have been disciplined. He said under the previous hearing other administrative regulations had been discussed also giving examples of circumstances where he would have to be on standby. **Chair Evans:** Referred to the situation where he would be called back and asked if he was paid for that time or given flex time. **AW Mattice:** Responded that was correct. He noted that when he would be called back to a facility he would be entitled to call back pay or flex time but that was not standby.

Dominika Morun: Referred to paragraph one and said it stated that department employees would make timely verbal notifications to their supervisors. She asked if a lieutenant was a supervisor. **AW Mattice:** Responded yes. **Dominika Morun:** Asked if they could call a lieutenant as well, not him. **AW Mattice:** Responded that the administrative regulation applied to the entire chain of command of which he was a part. **Dominika Morun:** Stated it would be the appropriate chain of command and asked if that meant they would call a lieutenant. **AW Mattice:** Stated they would call the shift sergeant but eventually it would go up to the associate warden. He said the intent of the administrative regulation was to deal with situations where a line-level correctional officer would not be equipped to deal some critical situations. He said he would receive the call at home as a result of the chain of command as set out in the regulation.

Dominika Morun: Asked if there was currently a schedule addressing who was on standby. **AW Mattice:** Responded yes and he was part of that schedule. He said he put in his standby hours as per the direction he received. **Dominika Morun:** Asked prior to the schedule, how did he know he was on standby? **AW Mattice:** Responded he did not know he was entitled to standby. **Dominika Morun:** Stated that he thought he had the responsibilities of NAC 284.218 but was not entitled to the pay. **AW Mattice:** Stated he was directed to be on standby but not to draw any pay for it. **Dominika Morun:** Asked if he agreed that he was on standby status only when he was on the schedule. **AW Mattice:** Responded yes, according to the schedule. He said he did not agree with it. He made reference to a point made earlier in the meeting when he referred to the NNRC lieutenant being on standby for Warm Springs when they had never actually worked there and as a result they could not be expected to respond in a timely manner. **Dominika Morun:** Discussed the duties of the associate warden in the relation to the top administrator. **AW Mattice:** Confirmed that if the top administrator was not there the associate warden would often be in charge.

Thomas Donaldson: Asked him to go through the chain of command from the bottom. **AW Mattice:** Responded from the bottom would be the correctional officer. He said the

COs reported to Senior Correctional Officers who had more experience. The Senior Correctional Officer reported to the Shift Sergeant and they reported to the Shift Lieutenants. He said the Shift Lieutenants would report to the Associate Wardens and the Associate Wardens reported to the Warden. **Thomas Donaldson:** Noted that when Administrative Regulation 332 referred to the appropriate chain of command, how it would occur would then depend on what was being reported and by whom.

Chair Evans: Asked if the Committee had any questions. There were none and he excused AW Mattice. He said he wanted to call the Committee's expert witness, Peter Long, to explain how standby pay and call back works.

Peter Long: Stated that he was the Deputy Administrator of HRM and it was his responsibility to oversee compensation classification through the division. He referred to standby status. He said there are five requirements to be eligible for standby. He noted if an employee is on standby it would mean they are on call. He explained they have the ability to do what they want but they need to be eligible to be called in. He stated the difference between standby and call back is standby once called, you're on the clock and you start getting paid. He said call back did not mean standby and you did not have to be ready to be called but if you are called you automatically received two hours of pay whether you work five minutes or two hours. He said if it goes beyond two hours then you would start to receive your regular pay. He said overtime could apply depending on the circumstances. He noted that an employee would not receive standby and call back at the same time. **Chair Evans:** Asked what one would get paid if on standby. **Peter Long:** Responded that you would get paid for the hours you worked once you were called. **Chair Evans:** Asked if it was appropriate to get flex time in lieu of overtime for call back pay. **Peter Long:** Responded that it might have happened but according to the regulations you should be paid.

David Flickinger: Asked if he was on annual, sick or other type of leave would he be eligible for standby pay during the other eight hours. **Peter Long:** Explained that it would apply to a 24-hour period unless you were directed otherwise. **David Flickinger:** Asked if this was the same as sick leave. **Peter Long:** Responded yes, if it was a full eight hours. **David Flickinger:** Thought that sick leave was different. **Peter Long:** Agreed that eight hours of sick leave would be the same difference as eight hours of annual leave in that you would not be eligible for the other 16 hours in that day.

Chair Evans: Referred to the issue of cell phones and standby and asked if Peter Long had had questions from other agencies about when it was appropriate to say it was standby and when it was not appropriate. **Peter Long:** Responded in addition to the five mentioned criteria that stated when an employee was directed to be available and you were not available and then not disciplined then that employee was not truly on standby. **David Flickinger:** Asked if an associate warden would be required to receive standby pay from the time he took the position. He noted he was asking this question because it appeared he was verbally directed but nothing was put in writing until the aforementioned letter in January. He asked with nothing in writing would AW Mattice not qualify for the standby pay. **Peter Long:** Responded it was his opinion that if the

employee had not received anything in writing that the expectations are that you would be available during certain times. He did not think that it would have to be in writing if it was routinely applied. He explained that if an employee was called during off-duty hours and expected to respond and you didn't respond then that would be standby. He said if an employee was called and the employer could not get a hold of the employee followed by no disciplinary action associated with that then that would change to call back.

Thomas Donaldson: Asked the Committee members to refer to the NAC 284.218 in Exhibit 3. Asked Peter Long for confirmation that it did not have to be a written directive to be available. **Peter Long:** Confirmed that was correct. **Thomas Donaldson:** Discussed when the period of standby would begin. He discussed compensatory time off/flex time at 5% for his normal rate of pay for every hour on standby. He asked what the premium would be for call back pay. **Peter Long:** Responded there was no premium for call back as it was just a guarantee of two hours of regular pay or overtime depending on how many hours the employee had worked. **Thomas Donaldson:** Referred to an earlier question about compensatory time off being the same as flex time. **Peter Long:** Responded he had not understood the question. **Thomas Donaldson:** Asked whether compensatory time off was the same as flex time. **Peter Long:** Confirmed no. He explained flex time was if an employee worked an extra hour today then the employee could work one hour less the following day. He said it was usually documented in the comments section of a timesheet. He added that there was no requirement about tracking flex time hours in the NAC but documenting it in the comments section was a management tool set by a department. **Thomas Donaldson:** Asked if cash payments were preferred but with compensatory time or flex time would it be appropriate for compensation for standby pay. **Peter Long:** Said that he had heard he had flexed it out but that was not appropriate for regulations. **Thomas Donaldson:** Asked Peter Long if it was prevented by the regulation. **Peter Long:** Responded that the preferred method is cash payment or compensatory time off. **Thomas Donaldson:** Noted that it was at the employee's request. **Peter Long:** Acknowledged that was correct.

Dominika Morun: Referred to the issue of standby which he had stated could be either verbal or written. **Peter Long:** Said if a person met the requirements they would be on standby whether verbal or written. He stated that an employee could not direct himself but would receive direction from management in one way or another. **Dominika Morun:** Asked how they would know a person was on standby if it was not noted on a timesheet. **Peter Long:** Responded that the timekeeper would know that information. **Dominika Morun:** Stated that employee would not get paid unless it was on their timesheet. **Peter Long:** Responded that was correct.

Stephanie Canter: Asked if he considered the position in the prison to be a 24-hour position. **Peter Long:** Responded that he considered the facility a 24-hour facility, not every position. He said that just because an employee is working in a 24-hour facility it would not mean that any position would automatically qualify for standby pay. Employees would have to meet all the requirements to qualify for standby pay.

Chair Evans: Advised the Committee that they would take a ten-minute break.

Dominika Morun: Called Deputy Director E.K. McDaniel to give testimony. **E.K. McDaniel:** Stated his name and said he was the Deputy Director for Operations for NDOC. He stated he had been in the position since August 2011. He noted previously he was a warden in Nevada State Prison since July 17, 1993. He added before that he was a warden at the Oklahoma Department of Corrections for a period of 20 years. He stated that he had begun working in correctional facilities on June 8, 1975. **Dominika Morun:** Referred him to Exhibit Q, the NAC concerning standby pay. She asked if he was familiar with NDOC's policy for paying associate wardens standby pay pursuant to NAC 284.218 and Administrative Regulation 120. **E.K. McDaniel:** Responded he was. He noted generally speaking, it can happen several different ways. He said if a person is working for the institution and you need that employee to be available to take phone calls or respond to the institution then you would place them on standby. He said the NAC was a bit outdated with references to pagers and telephones. He said before the advent of cell phones the intent was that the employee would be at home near a telephone while on standby pay. He said when you were assigned to be on standby then the employee would receive the compensation for that on the timesheet. **Dominika Morun:** Asked him as per the NAC, what it meant to be "*directed to remain available for notification to work during specified hours*". **E.K. McDaniel:** Responded that it meant the employee was capable of being contacted, that the employee would have the means by which if the institution had a need for you they could contact you. He said the employee could then respond to the institution within a reasonable amount of time, approximately 30 minutes.

Dominika Morun: Referred to his comment about there being different methods of direction. She added that the grievance started with the time period January 2006 so could he keep that period of time in mind. **E.K. McDaniel:** Stated he was not sure of the years. He said with his tenure at NDOC there had been three different ways. He said when he first arrived the director had directed wardens to have people on standby on a rotating basis, so between the warden and any associate wardens. When asked, he said that in the institutions he worked at no single associate warden was always on standby, but purely rotational. **Chair Evans:** Asked if any of those people was on the rotation, would they receive standby pay for all the hours off-duty. **E.K. McDaniel:** Responded yes, if they were eligible, not during the working day but, for example, 5 p.m. to 8 a.m. the following morning. **Dominika Morun:** Referred to the associate wardens on standby and asked if they put the time on the timesheets. **E.K. McDaniel:** Responded yes and then it was approved by the warden. **Dominika Morun:** Asked about an AOD.

E.K. McDaniel: Said with a change of directors the new director made a decision to have an Administrative Officer of the Day (AOD). He explained it was similar to what he had just mentioned but more formal. He said it was then rotated throughout the state as opposed to institution. He said there was an AOD for the entire department. He explained that all the wardens and associate wardens in the State of Nevada and they were on a list and there would be an AOD for the entire state. **Dominika Morun:** Asked at that time if associate wardens were put on the list as AOD then they would be on standby status. **E.K. McDaniel:** Confirmed yes that was correct. He described a statewide schedule and how it worked. He noted that the AOD would put those hours on their timesheet,

excluding wardens. He stated that the system ended with the advent of cell phones in addition to a new director. He said the new director did not want to put so many people on standby or use an AOD. He said it became more of an informal process. He said if employees did not answer their phones there was no disciplinary action taken. He said during that time some employees felt that they should get standby pay if they had been provided with a cell phone. He said it was discussed at that time and it was felt that that was not the intent and purpose of the cell phone. He said the cell phones were issued for the convenience of the staff, not the institutions. He said for the institution that he worked at, if the associate wardens were called back to the institutions they would be paid call back pay.

E.K. McDaniel: Stated for the last phase regarding direction there was some confusion. He noted that some confusion came about due to changes in directors. He said with Director Cox there was a memorandum and some confusion regarding employees thinking the issue of a cell phone meant a person was on standby. He said their intention was that no one was on standby. He said Director Cox decided to clarify it by doing scheduling. He said at that time they instructed the institutions to develop an AOD schedule, made up of the warden and associate wardens at each facility and some other employees. He said the employees on the schedule were rotated. He said when a person got placed on that rotation for a certain period of time then they would receive standby pay for that time. **Dominika Morun:** Asked him during this period if there was ever one person on standby 24/7. **E.K. McDaniel:** Responded no. He confirmed that the schedule he had just discussed was the current one used. **Dominika Morun:** Asked what would happen if an employee did not enter standby hours on the timesheet. **E.K. McDaniel:** Responded they would not be paid. He said to his knowledge NDOC had never denied a request for standby pay. **Dominika Morun:** Noted that AW Mattice had entered no standby hours on his timesheets during the six years. She asked if it was possible to determine the standby hours. **E.K. McDaniel:** Advised that it could be approximate and they could review the telephone records. **David Flickinger:** Asked about the situation if AW Mattice had not put standby hours on his timesheet then should the supervisor have responded to that omission and corrected it. **E.K. McDaniel:** Responded yes, as the supervisor should have known. He said that was his contention in this grievance as the supervisor would have known. He said this would be the case with the exception of the period 2010 to 2011 when no one was being paid. **E.K. McDaniel:** Responded yes, it was from approximately 1999 to 2000, until 2011 when they were not doing standby pay because no one was directed to be on it. **David Flickinger:** Asked about 2007 to 2009 when it was showing that there were multiple people receiving standby pay. He said it stopped during 2010 to 2011 and then resumed. **E.K. McDaniel:** Acknowledged that it had changed several times and he would have to go back and research dates.

Mandy Payette: Referred to the AOD list, Exhibit G and asked were the dates beside their names reflective of the times they were on the schedule or standby pay. She referred to AW Mattice and said according to the list he would only have been on standby for two weeks the whole year. **E.K. McDaniel:** Referred to the list and acknowledged the two weeks but then reminded the Committee that they were using men from the whole State of Nevada which was approximately 25 people, hence only two weeks.

Dominika Morun: Referred to the AOD list and noted some dates in 2006. She asked what about 2007. **E.K. McDaniel:** Responded it looked like January 2-7 and September 17-21. He said for 2008, March 28-April 4 and November 3-9. **Dominika Morun:** Referred everyone to their Exhibit B, Number 5 and said from 2007 to 2009 the associate wardens were paid standby hours. She asked if this correlated to the AOD schedules. **E.K. McDaniel:** Responded he did not know as it was redacted. He thought it might be hours not dollars. It thought it might be close to doing it two to three times a year. **Dominika Morun:** Noted that it appeared to be in line with his previous testimony. She confirmed the current scheduling started in 2012 due to the warden's meeting. She referred him to the grievance and asked about his involvement. **E.K. McDaniel:** Responded that after the grievance was filed he was the one who would get notice that he should respond. He reviewed the grievance and accompanying documentation. He said, although he couldn't remember on this occasion, that he sometimes would personally call a supervisor or personnel for background and information on policies. He said he then responded. **Dominika Morun:** Asked if he had denied the grievance. **E.K. McDaniel:** Responded that he did. He noted it was untimely. He said Mr. Mattice was an intelligent and well-respected manager in the NDOC and was aware of the rules and regulations. He said that by filing the grievance he had shown he was not afraid to speak his mind. He said he felt he knew since he assumed the position that he was qualified to get standby pay. He said when he was originally told in 2006 that he was not allowed to put standby hours on his timesheet that he should have filed a grievance at that time as he knew the policy.

Dominika Morun: Referred him to Exhibit K, the minutes of the warden's meeting, Page 2. She asked if standby was discussed at this meeting and was told yes. **E.K. McDaniel:** Responded that it was his understanding that they would develop the standby schedule. He noted that the date of that meeting was January 19, 2012. He said AW Mattice was spoken to subsequent to the meeting. **Dominika Morun:** Asked for the date when AW Mattice filed his grievance. **E.K. McDaniel:** Responded May 9. He said this was approximately five months after the meeting. He agreed that this was another example of being untimely as he was made aware he could apply for standby but still did not. **Dominika Morun:** Stated that he had also denied the grievance for other reasons including that he did not meet NAC 284.218. She added that he had also not included the standby hours on his timesheets.

Thomas Donaldson: Referred everyone to Exhibit K and asked if AW Mattice was at the meeting on January 19, 2012. **E.K. McDaniel:** Responded no. No associate wardens were there. **Thomas Donaldson:** Stated that his directive to the wardens on January 19, 2012 was to go back and start a procedure at each institution for standby pay for the associate wardens. **E.K. McDaniel:** Responded that was correct. He asked if he knew when that had happened at WSCC. **E.K. McDaniel:** Thought it was probably about two weeks later. He said within a month the director decided that he wanted not an individual schedule but a schedule reflecting each individual institution for the whole department. He said they then incorporated all the individual schedules into one. **Thomas Donaldson:** Said that according to AW Mattice's testimony he stated that he did not receive standby

pay until May of 2012. He asked Mr. McDaniel if he doubted that. **E.K. McDaniel:** Responded he did not believe it was true. He said he believed he was told. **Thomas Donaldson:** Asked on what he based that statement. **E.K. McDaniel:** Responded based on his instructions to his supervisor. **Thomas Donaldson:** Referred to Exhibits A through R showing a list at Warm Springs indicating that AW Mattice was entitled to standby pay prior to May of 2012. **E.K. McDaniel:** Stated he was entitled to it the entire time he had worked for the NDOC when placed on standby. **Thomas Donaldson:** Asked if there were any documents that would show when AW Mattice started receiving standby pay. **E.K. McDaniel:** Responded it would be on his timesheets.

Thomas Donaldson: Referred the Committee to Exhibit B, the spreadsheet. He referred to Debra Brooks and said she was an associate warden at Ely State Prison. **E.K. McDaniel:** Responded she was one. He agreed his budget account was 3751. **Thomas Donaldson:** Asked if there was any reason to doubt that she had incurred 131 hours of standby pay in F/Y 2007. **E.K. McDaniel:** He responded no. **Thomas Donaldson:** Asked about Adam Endel who had incurred another 353 hours of standby pay in F/Y 2007. **E.K. McDaniel:** Responded yes. **Thomas Donaldson:** Said the two current associate wardens in 2012 were Mike Byrne and Adam Watson. **E.K. McDaniel:** Responded no, that was after he left. **Thomas Donaldson:** Asked when Gregory Cox became the director of NDOC. **E.K. McDaniel:** Responded it was in January/February 2011.

Chair Evans: Asked legal representatives for the grievant and agency to not ask witnesses to interpret regulations and code and to ask what they knew as opposed to conjecture.

Dominika Morun: Called Warden Greg Smith. **Greg Smith:** Stated his name was Gregory Smith, Warden at WSCC. He stated he had been the warden from approximately June 2011. He said previously he was the warden at Nevada State Prison February 1, 2009. He stated prior to that he worked at the offender management unit at central office since 2000. He said he began his career in corrections in 1986. He confirmed that he began working with AW Mattice in June 2011 when he began working at WSCC.

Dominika Morun: Referred to Exhibit K, the warden's meeting. She asked him if he was at the meeting and did he hear E.K. McDaniel give directions regarding standby pay. **Greg Smith:** Responded that was correct. **Dominika Morun:** Asked if he had followed those directions and had spoken with AW Mattice subsequent to that meeting. **Greg Smith:** Confirmed that he had that conversation on January 23rd. **Dominika Morun:** Asked if he had had a conversation with AW Mattice about putting standby hours on his timesheets. **Greg Smith:** Responded he thought it went unsaid. They were developing a standby list. He said AW Mattice had questions and the matter was discussed. He felt that that was his job. He said that AW Mattice had told him about his earlier conversation with retired Warden Helling who stated it was part of his job and he did not necessarily agree with it. He said they worked on the list and then it was turned in within two weeks. **Dominika Morun:** Referred to the conversation with retired Warden Helling in which AW Mattice was told he could not claim for the standby hours. **Greg Smith:** Stated that he had said it was his job. He said that AW Mattice said it was his recollection that I was

given the keys, the badge and told you're on standby pay and you don't get compensated. **Dominika Morun:** Asked about his response. **Greg Smith:** Replied that his response was, well you do now. **Dominika Morun:** Asked if it was clear that he was supposed to enter standby hours on the timesheets from that conversation. **Greg Smith:** Responded yes. In response to a question he confirmed that currently at WSCC he was warden and AW Mattice was the associate warden. **Dominika Morun:** Asked if AW Mattice was receiving standby pay and if so, when. **Greg Smith:** Responded he was receiving the pay every 3rd cycle, every two weeks as per the schedule. He confirmed that he was receiving standby pay only when it was on the schedule.

Dominika Morun: Asked if he carried a cell phone as part of his duties. **Greg Smith:** Replied yes. He noted that the NDOC required him to answer his phone if he was on standby. **Dominika Morun:** Said if he was not on standby was he still required to answer his phone. **Greg Smith:** Replied no. **Dominika Morun:** Asked if he recollected that AW Mattice directed his staff to call him after hours even if he was not scheduled for standby. **Greg Smith:** Replied that AW Mattice was a dedicated associate warden and wanted to be informed of what was going on in the institution, if something went wrong or something happened. He said his lieutenants knew to contact him under those circumstances and if not AW Mattice, then himself. He noted that that was not standby. **Dominika Morun:** Asked if AW Mattice was called but was not on standby, responded to the facility would he be entitled to compensation. **Greg Smith:** Responded yes. **Dominika Morun:** Asked him if he had ever directed AW Mattice to be on standby. **Greg Smith:** Responded no, not apart from the schedule. **Dominika Morun:** Asked him if he had ever told AW Mattice that he had to answer his phone 24/7. **Greg Smith:** Said it was never discussed and as he was in the process of moving offices and was working at two institutions he had regular briefings from him. **Dominika Morun:** Asked him after the warden's meeting did AW Mattice begin to put standby hours on his timesheets. **Greg Smith:** Said yes, reluctantly. **Chair Evans:** Asked if there was a time that he worked standby but did not enter the hours on the timesheet and this was not subsequently corrected. **Greg Smith:** Said that was correct.

Dominika Morun: Referred to Exhibit B, the grievance. She asked what his involvement was in the grievance process. **Greg Smith:** Replied that he answered the first level. **Dominika Morun:** Asked if he could summarize his intention and answer. **Greg Smith:** Said it was a brief summary of how it was untimely because of the length of time from when he had instructed him to develop a standby schedule. He said that when it came in May it had been four months. He said he felt the employee should have made up his mind as he either wanted it or did not. **Dominika Morun:** Said if an employee submitted a timesheet would they basically be affirming all the hours are correct. **Greg Smith:** Confirmed yes.

Thomas Donaldson: Asked if it was correct that when he approved AW Mattice's timesheet that he was also acknowledging that the hours were correct. **Greg Smith:** Said correct. **Thomas Donaldson:** Said based on the timesheets they had it did not appear that he approved any standby pay for AW Mattice until May 7, 2012. He asked if that was correct. **Greg Smith:** Confirmed yes, he had not rejected any timesheets. **Thomas**

Donaldson: Asked when the schedule was finally implemented at SWCC. **Greg Smith:** Replied he could not give an exact date but approximately two weeks after the time they were mandated to have it. **Thomas Donaldson:** Noted the warden's meeting was January 19, 2012, and was he then saying that by the end of January/early February that the standby schedule was in place at WSCC. **Greg Smith:** Said yes and it included himself, AW Mattice and the lieutenant. He confirmed the final version was submitted within days of that. **Thomas Donaldson:** Asked if this was when AW Mattice was first scheduled to work. **Greg Smith:** Said no. **Thomas Donaldson:** Said they had the timesheets but he had not seen the first schedule. **Greg Smith:** Said he could have produced the first schedule. **Thomas Donaldson:** Referred to Exhibit E, Page 137 on the lower right-hand corner. He asked if it was for the pay period February 6-19. **Greg Smith:** Said that was correct. **Thomas Donaldson:** Stated that there was no standby pay on that schedule and none appeared until Page 143 or May 7th. He stated he was therefore not on the schedule between February and May. **Greg Smith:** Said he was not on the schedule. **Thomas Donaldson:** Asked if he had approved the timesheets without any standby pay during that period. **Greg Smith:** Stated that was correct.

Dominika Morun: Referred to the timesheets and said he had approved the timesheets. She asked if he had told him then to enter standby pay. **Greg Smith:** Said yes. **Dominika Morun:** Made the point that employees were required to affirm that the information on timesheets was accurate. **Thomas Donaldson:** Made the point that Warden Smith would do the same thing by approving the timesheets. **Greg Smith:** Stated that was correct.

Dominika Morun: Stated the last witness would be former Warden Don Helling. **Chair Evans:** Asked him to state his name, occupation and address. **Don Helling:** Stated his name is Don Helling and he was a retired Deputy Director of the NDOC during the timeframe of the grievance. He said he was the warden at the NNCC and lived in Douglas County. He said he became warden at the NNCC in September 2001. He said he was appointed Deputy Director in April 2007. He said he retired in that position in June 2011. He stated that prior to being the warden in September 2001 he was the warden at the Nevada State Prison for about one year. He noted he was warden at the rural conservation camps for approximately 18 months. He said he was an associate warden at the Nevada State Prison for about six years.

Dominika Morun: Referred to the period that he had worked with AW Mattice at the NNCC during some of the period of the grievance. She asked whether as warden cell phones were issued to associate wardens. **Don Helling:** Stated he did as it was standard practice. He said he issued them as a greeting and also to develop a good working relationship with staff. **Dominika Morun:** Referred to the issue of the cell phones and asked if he had ever issued a phone to an associate warden and told them that it was being issued specifically to put that associate warden on standby status. **Don Helling:** Stated he did not recall that.

Dominika Morun: Asked whether he was involved in the promotion of AW Mattice: **Don Helling:** Noted that he was involved in the hiring process but did not recall at that specific time providing him with a cell phone but it was standard practice and he carried

the phone. **Dominika Morun:** Asked if he had told him he had to be ready to respond to the facility 24/7. **Don Helling:** Responded that he could not imagine saying that. He said it was not realistic for any employee to be able to respond 24/7 because it would wear a person out and there were other people available. **Dominika Morun:** Asked him if he had told AW Mattice to not expect standby pay as it was all part of the job. **Don Helling:** Responded he could not imagine himself saying that as it would be wrong. He said based on his own experience he had received standby pay as an associate warden in the 90's based on the administrator on duty and on a formal list. He discussed the circumstances where he had formerly used a recall roster at work. **Dominika Morun:** Asked if AW Mattice had asked about standby status what would he have told him? **Don Helling:** Said he would call the experts, payroll, and the personnel department and ask for their response and base his actions accordingly.

Thomas Donaldson: Asked if he had approved timesheets of AW Mattice during the years 2006 and 2007. **Don Helling:** Said yes. **Thomas Donaldson:** Noted that James Baca was another associate warden at the time. **Don Helling:** Said yes. **Thomas Donaldson:** Stated that the institution number for NNCC was 3717. **Don Helling:** Said yes. In response to a question he confirmed that he had also approved James Baca's timesheets.

Chair Evans: Asked and indicated that there were no further questions. He indicated that they would move to closing statements.

Thomas Donaldson: Stated that AW Mattice had been on standby status since his promotion to the position in January of 2006. He referred to Exhibit 1, the grievance, last page, the spreadsheet which noted that every other associate warden was being paid standby pay during that period of time except AW Mattice and Associate Warden Morrow. He said that Don Helling did not recall the exchange with AW Mattice in 2006 leaving the Committee solely with the testimony of AW Mattice that he was told it was part of the job and you are not entitled to standby pay. He said for that reason he did not put in for it He said one could not argue that he did not comply with the regulation on timesheets when he was directed not to put in for standby pay. His supervisor was the one who reviewed and approved every one of the timesheets. He was told, do not put in for standby pay, be available 24/7 yet at the same time he was approving the other associate wardens for standby pay. He reiterated that the only reason AW Mattice had not put it in was because he was told not to. He said then, six years later, here is the director claiming that AW Mattice was not familiar with NAC 284.218 but then the director issues a letter saying he recently learned of that regulation in January of 2012. He said then they go into the formal policies and schedules at each institution and continue to pay some associate wardens and he gave an example of another associate warden receiving during a period of eight months a total 2,500 hours of standby pay as opposed to AW Mattice over a period of years with zero hours and Associate Warden Morrow, zero, as they had been told they were not entitled to it.

He said there was certainly excuse, justification and explanation as to why AW Mattice did not put in for the standby pay and why he was not paid. This was because he did not

put in for it and had been directed not to, and finally, why he clearly was entitled to it. He acknowledged that they had to calculate the number of hours over the years and that was something that could be done with the use of the exhibits provided as a result of the audit ordered by the district court. He confirmed that could be calculated but what was important was to come to a decision that he was entitled for that period of time and then determine a method for determining that.

Dominika Morun: Stated that the department did deny that AW Mattice was on standby for all the times that he said. She acknowledged that it was true that some associate wardens were paid standby as reflected on the spreadsheet. She said that was because they were directed to be on standby during those times and because the hours were entered on their timesheets. She referred to Don Helling's statement that he did not recall making the statement. She said there was no proof that AW Mattice was directed to be on standby 24/7. She stated that Don Helling said that he would not have made such a statement but would have referred it to HR for a directive. She acknowledged that there was a memo written by the director regarding standby pay but said there were procedures in place prior to that. She said with regard to AW Mattice there was no documentation supporting his statement that he was on standby other than the times he was scheduled. She said even during those times he had not entered it on his timesheets so it would be impossible to say at this time that he actually worked that schedule. She said the department was asking them to deny the grievance.

Chair Evans: Thanked both representatives. He said they would now open it up to the Committee for deliberation. He reminded members that it was up to the employee to prove their grievance. He said there were several issues they needed to consider and he would allow members to bring them up during the deliberations. He said they needed to consider whether the grievance was truly timely. He said the other issue was a previous case and how similar was it to the current case. He said if they decided it was timely and was not the same as the previous case then it would come down to whether AW Mattice was eligible for standby pay and if so, how much.

David Flickinger: Referred to the warden's meeting and letter from January with regard to a new policy and AW Mattice not receiving standby pay until May. He said that he felt they had a lack of evidence to help them decide the issue of whether it was timely or not. He said the Committee now had just a word-of-mouth comment about what Mr. Smith said to AW Mattice. **Stephanie Canter:** Said the issue of whether it was timely or not was tied to the pay period when it was filed. **Mandy Payette:** Said the 20 days was when a person realized they had been grieved. She noted he had had a meeting with the warden in January and so knew the standby policy was coming back and yet there was a period of four months when he was on standby and did not enter the hours on the timesheets. She said for that reason she was inclined to say it was not timely. **Sherri Thompson:** Stated she agreed with Mandy Payette. **Stephanie Canter:** Noted that she remembered the testimony of the current warden in which he stated he would get paid for it now but did not remember the grievance stating that. **Mandy Payette:** Asked AW Mattice why he decided to collect standby pay in May but not after the January meeting. **AW Mattice:** Responded because there was a lag time between when the direction was given and when

the schedule was implemented. **Mandy Payette:** Asked him what date he was on standby. **AW Mattice:** Said that his first time on standby was when he collected it in May. He said the lag time was not uncommon with the NDOC.

David Flickinger: Asked whether from January to May it was in process of being written and then was not implemented until May. **AW Mattice:** Responded there was a series of discussions. **Stephanie Canter:** Asked if it was first implemented in May. **AW Mattice:** Responded it was the first time he had been scheduled for standby. **Stephanie Canter:** Stated that she was interested in when the schedule was in force because if there was no schedule then he was not entitled to standby pay from January to May. **Mandy Payette:** Indicated she was trying to determine why he waited until May to grieve it if during discussions he would have been aware he was eligible for it. **AW Mattice:** Said he would have to research, pull up the schedule and see when it was implemented. He said he filed the grievance when he became aware of it as noted in the grievance. **Chair Evans:** Said from the time he filed the grievance did the Committee think it was timely to address any outstanding standby pay? **Stephanie Canter:** Proposed a motion and Katie Armstrong asked her for clarification before it was put to a motion. **Chair Evans:** Clarified and said she was saying that anything that happened before 20 working days before he filed the grievance then any of those issues would not be timely.

MOTION: Move that the Committee only address any activity that happened from April 16 forward that would be considered timely for the purposes of the grievance.
BY: Stephanie Canter
SECOND: Sherri Thompson
VOTE: The vote was 4 nays and 2 yeas

Chair Evans: Asked for clarification. He asked if the Committee was considering timeliness or were they also approving the grievance back to that date. **Stephanie Canter:** She said any compensation prior to that would be untimely. **Chair Evans:** Said so it was any time period that hit during the 20 days prior. **Chair Evans:** Asked if there was another motion on timeliness. **David Flickinger:** Stated he was still deliberating as he believed supervisor responsibility an issue. He added he would have liked to have a better understanding. **Mandy Payette:** Discussed her views on timeliness regarding why AW Mattice waited until May to file the grievance instead of January. **David Flickinger:** Discussed some of the issues regarding standby, i.e. being told to do it without pay. He said he felt strongly that much of the responsibility should be on the supervisor. **Chair Evans:** Said it appeared to him that the employee had a good argument saying he did not know certain people were eligible for standby pay until these other people filed a grievance. He said if the employee was not aware until the other grievance was filed was one thing but if the employee was familiar with standby pay then he would agree with the agency that said he should have filed the grievance when he knew he had not received the standby pay. He said he did not feel that the employee made his case strongly to the Committee that it was timely. He confirmed based on the evidence that he considered the grievance in total untimely because he was aware of standby pay.

MOTION: Move that the Committee deny the grievance because the employee failed to substantiate that he was on standby pay when he was not on annual or sick leave and failed to appropriately document standby pay as per NAC 284.218 and failure to document the timesheets as per NAC 284.5255
BY: Stephanie Canter
SECOND: David Flickinger
VOTE: The vote was unanimous in favor of the motion

Chair Evans: Stated that was the decision of the Committee. He thanked all concerned.

VII. PUBLIC COMMENT

Read into record by **Chair Evans:** No vote or action may be taken upon a matter raised during public comment until the matter itself has been specifically included on an agenda as an item upon which action may be taken. (NRS 241.020) Comments will be limited to five minutes per person and persons making comment will be asked to begin by stating their name for the record.

Chair Evans: Asked if there was any public comment and there was none.

VIII. ADJOURNMENT

MOTION: Move to adjourn the meeting
BY: Stephanie Canter
SECOND: Michelle Weyland
VOTE: The vote was unanimous in favor of the motion