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FILED
July 25, 2023
State of Nevada
E.M.R.B.
4:25 p.m.

7
8 Before the State of Nevada
9 Government Employee-Management
10 Relations Board

11 AFSCME, LOCAL 4041,
12 Complainant,

13 v.

14 STATE OF NEVADA, DEPARTMENT
15 OF VETERANS SERVICES, SOUTHERN
16 NEVADA STATE VETERANS HOME,

17 Respondents.

CASE NO.: **2023-019**

**AFSCME, LOCAL 4041'S
PROHIBITED PRACTICE
COMPLAINT**

18
19 **INTRODUCTION**

20 This is a prohibited practice complaint pursuant to Nevada Revised Statutes (“NRS”)
21 288.620(1)(a) and 288.270(1)(a) based on Respondents unlawful interrogation of an employee and
22 member of the exclusive representative, the American Federation of State, County and Municipal
23 Employees, Local 4041 (“AFSCME”), for the purpose of interfering with, restraining, and
24

1 coercing the employee from the exercise of rights guaranteed under the Employee-Management
2 Relations Act (the “EMRA” or the “Act”) as codified under NRS Chapter 288.

3 Under NRS 288.620(1)(a) and 288.270(1)(a) it is a prohibited and unfair labor practice for
4 a government employer to “willfully to . . . [i]nterfere, restrain or coerce any employee in the
5 exercise of any right guaranteed” under the EMRA. Complainant, AFSCME Local 4041, by and
6 through its undersigned counsel, respectfully submits this Complaint and complains and alleges as
7 follows:

8 **JURISDICTION AND PARTIES**

9 1. At all times relevant herein, Complainant, AFSCME Local 4041, was and is an
10 “employee organization” pursuant to NRS 288.040 and/or a “labor organization” pursuant to
11 Section 12 of the Act. Complainant’s current mailing address is 504 E. Musser Street, Ste. #300,
12 Carson City, NV 89701.

13 2. At all times relevant herein, Respondents were and are a “Government Employer”
14 pursuant to NRS 288.060 and NAC 288.R056-19.2. Respondent’s, Southern Nevada State
15 Veterans Home, current mailing address is 100 Veterans Memorial Dr., Boulder City, NV 89005.

16 3. The Board has jurisdiction of this matter pursuant to NRS 288.110 and NRS
17 288.280 to hear and determine “any controversy concerning prohibited practices.” NRS 288.110
18 also provides, in relevant part:

19 2. The Board may hear and determine any complaint arising out of the
20 interpretation of, or performance under, the provisions of this chapter by the
21 Executive Department, any local government employer, any employee, as
defined in NRS 288.425, any local government employee, any employee
organization or any labor organization . . .

22 4. The Board may not consider any complaint or appeal filed more than 6
23 months after the occurrence which is the subject of the complaint or appeal.

1 4. NRS 288.270 provides, in relevant part:

2 1. It is a prohibited practice for a local government employer or its
3 designated representative willfully to:

4 (a) Interfere, restrain or coerce any employee in the exercise of any right
5 guaranteed under this chapter . . .

6 5. NRS 288.620 provides, in relevant part:

7 1. It is a prohibited practice for the Executive Department or its designated
8 representative willfully to:

9 (a) Engage in any prohibited practice applicable to a local government
10 employer or its designated representative set forth in subsection 1 of
11 NRS 288.270, except paragraphs (e) and (g) of that subsection.

12 6. Employee organizations are required to raise before the Board issues within the
13 jurisdiction of the Board before resorting to civil suit. *See Rosequist v. Int'l Ass'n of Firefighters*,
14 118 Nev. Adv. Op. No. 47, 49 P.3d 651 (2002).

15 **FACTUAL ALLEGATIONS**

16 7. Complainant has been the certified bargaining representative of Unit E,
17 Professional employees who provide health care, including without limitation, physical therapists
18 and other employees in medical and other professions related to health (“Unit E”), for the State of
19 Nevada since January 22, 2020.

20 8. Ms. Charlene Queen (“Ms. Queen”) is a Registered Nurse, Charge 4 who is
21 employed with the Respondent, the Southern Nevada State Veterans Home.

22 9. Ms. Queen is an active member of AFSCME Local 4041 and engages in lawful
23 concerted activities for mutual aid and protection in her workplace that are known to her employer.

24 10. On July 18, 2023, during non-work time and in non-work areas, Ms. Queen spoke
25 with several other employees about an AFSCME petition being circulated seeking to initiate a
26

1 meeting with the employer regarding the employer’s change to the lengths of employee shifts from
2 eight hours to twelve hours.

3 11. On the morning of July 19, 2023, Ms. Queen was summoned by her supervisor,
4 Corine Watson (“Ms. Watson”), into the supervisor’s office for what Ms. Queen thought was a
5 discussion about a work-related matter.

6 12. At this discussion on July 19, 2023, only Ms. Queen and Ms. Watson were present.

7 13. After a brief discussion about a work-related matter, Ms. Watson began
8 aggressively and angrily interrogating Ms. Queen about her protected activities with her union,
9 AFSCME.

10 14. Specifically, Ms. Watson asked Ms. Queen if she had asked another employee,
11 Nathan Miller (“Mr. Miller”), about an AFSCME petition going around or if she had Mr. Miller
12 sign that union’s petition.

13 15. Ms. Watson also asked if Ms. Queen had anything to do with Mr. Miller signing
14 the petition going around the workplace.

15 16. After Ms. Queen responded that she was not the one who had Mr. Miller sign the
16 petition, but that she did speak to Mr. Miller to explain the petition and its purposes, Ms. Watson
17 continued to interrogate Ms. Queen in a suspicious and accusatory tone.

18 17. Ms. Watson then asked “So, you are part of this petition going around?” and Ms.
19 Queen replied that she is involved with the union’s petition.

20 18. Ms. Watson then asked “Why? It has nothing to do with you, you are the house
21 supervisor, you shouldn’t even be part of this. You are part of the manager meetings; this is a
22 conflict.”

23 ///

1 (2021) (citing *Juvenile Justice Supervisors Ass'n v. County of Clark*, Case No. 2017-020, Item No.
2 834 (2018); *Clark Cty. Classroom Teachers Ass'n v. Clark County Sch. Dist.*, Item 237 (1989)).
3 There are three elements to a claim of interference with a protected right: “(1) the employer’s
4 action can be reasonably viewed as tending to interfere with, coerce, or deter; (2) the exercise of
5 protected activity [by NRS Chapter 288]; and (3) the employer fails to justify the action with a
6 substantial and legitimate business reason.” *AFSCME, Local 4041 v. State of Nevada*, Case No.
7 2020-001, Item No. 861-B (2021) (citing *Billings and Brown v. Clark County*, Item No. 751
8 (2012); *Medeco Sec. Locks, Inc. v. NLRB*, 142 F.3d 733, 745 (4th Cir. 1988); *Reno Police*
9 *Protective Ass'n v. City of Reno*, 102 Nev. 98, 101, 715 P.2d 1321, 1323 (1986)).

10 26. The EMRB and the NLRB have long held that interrogating employees concerning
11 their protected rights is an unlawful action by an employer. *See e.g., In the Matter of the Carson*
12 *City Sherriff's Employees Association*, Case No. A1-045319, Item No. 88 (1979) (respondents had
13 interfered with the Complainant’s rights by interrogating members of the Association as to their
14 union activities); *V & S ProGalv, Inc. v. N.L.R.B.*, 168 F.3d 270, 280 (6th Cir. 1999) (“It is well-
15 settled that an employer violates the [National Labor Relations Act] by interrogating its employees
16 about their union activities.”).

17 27. Respondents violated NRS 288.270(1)(a) and unlawfully interfered with
18 Complainant’s rights because the unlawful interrogation of Ms. Queen was coercive and was
19 intended to dissuade her from exercising her rights guaranteed under the EMRA.

20 28. Complainant is entitled to a declaration from the EMRB that Respondents
21 committed a prohibited practice and violated of NRS 288.270(1)(a) by unlawfully interrogating
22 Ms. Queen about her union activities protected under the EMRA.

23 ///

1 **PRAYER FOR RELIEF**

2 Complainant, AFSCME Local 4041, while reserving its right to amend this Complaint to
3 set forth additional facts, additional parties, or additional causes of action and prayers for relief
4 that are presently unknown to it, respectfully requests that this Board:

5 1. Find in favor of Complainant and against the Respondents on each and every claim
6 in this Complaint;

7 2. Find that Respondents' unlawful interrogation of an employee and union member
8 concerning her protected concerted activity under the EMRA is a violation of NRS 288.270(1)(a)
9 and that Respondents have committed a prohibited practice from which Respondents must
10 immediately cease and desist;

11 3. Order that Respondents are prohibited from unlawfully interrogating employees in
12 violation of NRS 288.270(1)(a) in the future;

13 4. Order that Respondent be made to pay the Complainant's attorney's fees and costs
14 incurred in this matter; and

15 5. Order further relief as the Board deems appropriate under the circumstances.
16

17 Date: July 25, 2023

18 Respectfully submitted,

19 
20

21 NATHAN R. RING, ESQ.
22 NV BAR NO. 12078
23 JESSICA S. GUERRA, ESQ.
24 NV BAR NO. 14210
25 STRANCH, JENNINGS & GARVEY, PLLC
26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 25, 2023, I have mailed, via Electronic Filing in portable
3 document format as required by NAC 288.070(d)(3), a true and correct copy of Complainant
4 AFSCME Local 4041's Complaint to Respondents, STATE OF NEVADA, DEPARTMENT OF
5 VETERANS SERVICES, SOUTHERN NEVADA STATE VETERANS HOME as addressed
6 below:

7
8 SOUTHERN NEVADA STATE VETERANS HOME
9 Attn: Fred E. Wagar
10 Director of the Department of Veteran Services
11 100 Veterans Memorial Dr.
12 Boulder City, NV 89005
13 wagarf@nv.gov

14 State of Nevada
15 Office of the Attorney General
16 Attn: Greg Ott, Chief Deputy Attorney General or
17 Lisa Evans, Deputy Attorney General
18 100 North Carson Street
19 Carson City, NV 89701
20 gott@ag.nv.gov
21 lfevans@ag.nv.gov

22
23
24
25 */s/ Suzanne Levenson*

1 AARON D. FORD
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2 NATHAN C. HOLLAND (Bar No. 15247)
Deputy Attorney General
3 State of Nevada
Office of the Attorney General
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6 *Attorneys for Respondents*

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7
8 **STATE OF NEVADA**
GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD
9

10 AFSCME, LOCAL 4041,
11 Complainant,
12 vs.

Case No. 2023-019

STATE OF NEVADA'S
ANSWER TO AFSCME, LOCAL 4041'S
PROHIBITED PRACTICE COMPLAINT

13 STATE OF NEVADA, DEPARTMENT
OF VETERANS SERVICES,
14 SOUTHERN NEVADA STATE
VETERANS HOME,
15 Respondents.
16

17 COMES NOW Respondents, State of Nevada, Department of Veterans Services
18 Southern Nevada State Veterans Home, by and through its counsel, Attorney General
19 Aaron D. Ford and Deputy Attorney General Nathan C. Holland, to answer the complaint
20 as follows:¹

21 **JURISDICTION AND PARTIES**

- 22 1. Respondents admit the allegations of Paragraph 1 of the Complaint.
- 23 2. Respondents admit the allegations of Paragraph 2 of the Complaint.
- 24 3. Paragraph 3 consists of a legal conclusion, to which no response is required.
- 25 4. Paragraph 4 consists of a legal conclusion, to which no response is required.
- 26 5. Paragraph 5 consists of a legal conclusion, to which no response is required.
- 27 6. Paragraph 6 consists of a legal conclusion, to which no response is required.

28 ¹ For clarity, Respondents have followed the numbering system used in the Complaint.

FACTUAL ALLEGATIONS

7. Respondents deny the allegations of Paragraph 7 of the Complaint.

8. Respondents deny the allegations of Paragraph 8 of the Complaint.

- Ms. Queen was released from probation with Southern Nevada State Veterans Home for multiple reasons that were unrelated to her association with AFSCME.

9. Respondents deny the allegations of Paragraph 9 of the Complaint.

- Respondents lack sufficient knowledge to confirm if Ms. Queen is still an active member of AFSCME and, on that basis, deny the allegations of the first line in Paragraph 9 of the Complaint.

- Respondents lack sufficient knowledge to confirm if Ms. Queen is employed, as she no longer works for the State, and, on that basis, deny the allegations of the first line in Paragraph 9 of the Complaint.

10. Respondents deny the allegations of Paragraph 10 of the Complaint.

11. Respondents admit in part and deny in part the allegations contained in Paragraph 11 of the Complaint.

- Respondents admit that “[o]n the morning of July 19, 2023, Ms. Queen was summoned by her supervisor, Corine Watson (“Ms. Watson”), into the supervisor’s office.”

- Respondents lack sufficient knowledge to confirm Ms. Queen’s state of mind and on that basis deny.

12. Respondents admit the allegations of Paragraph 12 of the Complaint.

13. Respondents deny the allegations of Paragraph 13 of the Complaint.

14. Respondents admit the allegations of Paragraph 14 of the Complaint.

15. Respondents admit the allegations of Paragraph 15 of the Complaint.

16. Respondents admit in part and deny in part the allegations of Paragraph 16 of the Complaint.

- Respondents admit to the allegations of the first two lines of Paragraph 16.

- Respondents deny the allegations of the last line of Paragraph 16.

17. Respondents admit the allegations of Paragraph 17 of the Complaint.

18. Respondents deny the allegations of Paragraph 18 of the Complaint.

19. Respondents deny the allegations of Paragraph 19 of the Complaint.

CLAIMS FOR RELIEF

Count 1

20. Paragraph 20 consists of a legal conclusion, to which no response is required.

21. Paragraph 21 consists of legal conclusions, to which no response is required.

To the extent that a response is required, Respondents deny it violated NRS 288.620(1)(a) and committed a prohibited practice procedure.

22. Paragraph 22 consists of legal conclusions, to which no response is required.

To the extent that a response is required, Respondents deny that NRS 288.270(1)(a) was violated.

23. Paragraph 23 consists of legal conclusions, to which no response is required.

To the extent that a response is required, Respondents deny that NRS 288.500(a) was violated.

24. Respondents deny the allegations of Paragraph 24 of the Complaint.

25. Paragraph 25 consists of legal conclusions, to which no response is required.

To the extent that a response is required, Respondents deny that a protected right was interfered with.

26. Paragraph 26 consists of legal conclusions, to which no response is required.

To the extent that a response is required, Respondents deny that Ms. Queen was interrogated.

27. Respondents deny the allegations of Paragraph 27 of the Complaint.

28. Respondents deny the allegations of Paragraph 28 of the Complaint.

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1 **AFFIRMATIVE DEFENSES**

2 Respondents also assert the following Affirmative Defenses:

3 **First Affirmative Defense**

4 The Complaint fails to state a claim upon which relief can be granted.

5 **Second Affirmative Defense**

6 Respondents are not personally involved in the cause in fact and/or the proximate
7 cause of the alleged constitutional deprivations.

8 **Third Affirmative Defense**

9 This action is time-barred by applicable statutes of limitations.

10 **Fourth Affirmative Defense**

11 Complainant failed to state a cognizable constitutional claim under
12 NRS 288.620(1)(a) and 288.270(1)(a).

13 **Fifth Affirmative Defense**

14 Complainant failed to mitigate damages, if any, and therefore, is barred from
15 seeking any damages hereunder.

16 **Sixth Affirmative Defense**

17 Respondents are immune from liability because the acts complained of were
18 discretionary in nature or were performed while carrying out a statute or regulation.

19 **Seventh Affirmative Defense**

20 At all-time relevant, Respondents held a good-faith belief that they were acting
21 reasonably and that their actions were privileged and legally justified.

22 **Eighth Affirmative Defense**

23 Complainant failed to exhaust administrative remedies.

24 **Ninth Affirmative Defense**

25 Respondents are immune from liability as a matter of law.

26 **Tenth Affirmative Defense**

27 Respondents reserve the right to amend this answer to allege additional affirmative
28 defenses if subsequent discovery so warrants.

1 **Eleventh Affirmative Defense**

2 Complainant is estopped from pursuing any claim against Respondents in
3 accordance with equitable principles of jurisprudence.

4 **Twelfth Affirmative Defense**

5 The doctrines of res judicata and/or collateral estoppel bar Complainant from
6 asserting the matters set forth in its Complaint and also acts as a bar to any relief sought
7 by Complainant.

8 **PRAYER FOR RELIEF**

9 Respondents, State of Nevada, Department of Veterans Services Southern Nevada
10 State Veterans Home, while reserving their right to amend this Answer to set forth
11 additional facts, additional parties, or additional causes of action and prayers for relief that
12 are presently unknown to it, respectively request that this Board:

13 1. Find in favor of Respondents and against Complainant on each and every
14 claim in this Complaint **and in Respondents' Counter Claim.**

15 2. Find that Respondents did not engage in unlawful interrogation of an
16 employee and union member concerning her protected concerted activity under the EMRA.

17 3. Find that Respondents did not violate NRS 288.270(1)(a), and thereby have
18 not committed a prohibited practice.

19 4. **Find that based on the totality of conduct throughout Ms. Queen's**
20 **employment, Respondents appropriately disciplined Ms. Queen's poor performance, and**
21 **continued violations of AFSCME's own CBA.**

22 5. Find that Respondents have the right to enforce management rights under
23 **NRS 188.150(3) and Article 25 of the parties' CBA.**

24 DATED this 25th day of August, 2023.

25 AARON D. FORD
26 Attorney General

27 By: /s/ Nathan C. Holland
NATHAN C. HOLLAND
28 Deputy Attorney General

1 STRANCH, JENNINGS & GARVEY, PLLC
2 NATHAN R. RING, Nevada State Bar No. 12078
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7 ***Counsel for Complainant***

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September 15, 2023
State of Nevada
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4:08 p.m.

8 **BEFORE THE STATE OF NEVADA**
9 **GOVERNMENT EMPLOYEE MANAGEMENT RELATIONS BOARD**

10 AFSCME, LOCAL 4041,
11 Complainant,

CASE NO: 2023-019

12 vs.

13 STATE OF NEVADA, DEPARTMENT
14 OF VETERANS SERVICES, SOUTHERN
15 NEVADA STATE VETERANS HOME,

**COMPLAINANT AFSCME, LOCAL
4041'S PREHEARING STATEMENT**

16 Respondent.

17 COMES NOW, Complainant AFSCME, Local 4041 ("AFSCME"), by and through its attorneys,
18 pursuant to NAC 288.250, submits the following Prehearing Statement in this action now pending before
19 the Local Government Employee-Management Relations Board ("Board" or "EMRB"). AFSCME
20 reserves the right to supplement or amend this Statement as new or additional information becomes
21 available. The Nevada Government Employee Management Relations Board has jurisdiction over this
22 matter under NRS 288.280 because the facts alleged herein demonstrate a prohibited practice by
23 Respondent under NRS 288.270 and NRS 288.620.

24 **I. STATEMENT OF THE ISSUE**

25 Whether State of Nevada, Department of Veterans Services, Southern Nevada State Veterans
26 Home ("Respondent") violated NRS 288.620(1)(a) and NRS 288.270(1)(a) when Respondent, through its
27 management, interrogated Charlene Queen ("Ms. Queen") for her involvement in union activities taken
28 on behalf of herself and her co-workers?

1 After a brief discussion about a work-related matter, Ms. Watson aggressively and angrily
2 interrogated Ms. Queen about her protected activities taken on behalf of her union, AFSCME.
3 Specifically, Ms. Watson asked Ms. Queen if she had asked another employee, Nathan Miller (“Mr.
4 Miller”), about an AFSCME petition going around or if she had Mr. Miller sign that union’s petition. Ms.
5 Watson also asked if Ms. Queen had anything to do with Mr. Miller signing the petition going around the
6 workplace.

7
8 Ms. Queen responded that she was not the one who had Mr. Miller sign the petition, but that she
9 did speak to Mr. Miller to explain the petition and its purpose. After that notice, Ms. Watson continued
10 to interrogate Ms. Queen in a suspicious and accusatory tone. Ms. Watson then asked “So, you are part
11 of this petition going around?” and Ms. Queen replied that she was involved with the union’s petition.
12 Ms. Watson then asked “Why? It has nothing to do with you, you are the house supervisor, you shouldn’t
13 even be part of this. You are part of the manager meetings; this is a conflict.” After Ms. Queen explained
14 why this is not a conflict, Ms. Watson also told Ms. Queen that “You need to know more about the CBA
15 and that the twelve-hour shifts are not in the contract. You need to have more of your facts known before
16 getting involved.”

17
18 **C. ARGUMENT**

19 Under NRS 288.620(1)(a), “[i]t is a prohibited practice for the Executive Department or its
20 designated representative willfully to . . . [e]ngage in any prohibited practice applicable to a local
21 government employer or its designated representative set forth in subsection 1 of NRS 288.270.”
22 Specifically, under NRS 288.270(1)(a), it is a prohibited practice to “[i]nterfere, restrain or coerce any
23 employee in the exercise of any right guaranteed under” the EMRA. NRS 288.500(a) further provides
24 that “[f]or the purposes of other mutual aid or protection” employees have the right “[o]rganize, form, join
25 and assist labor organizations... and engage in other concerted activities.”
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1 Respondents interfered with employees' rights guaranteed under the EMRA and violated NRS
2 288.620(1)(a) and 288.270(1)(a) when Ms. Watson unlawfully interrogated Ms. Queen about her union
3 activities. Specifically, the Respondent violated Ms. Queen's rights under the EMRA. Ms. Waston's
4 actions were purely for the purpose of interfering with, restraining, and coercing Ms. Queen from the
5 exercising of her rights guaranteed under the EMRA.

6 Under NRS 288.270(1)(a), "[t]he test is whether the employer engaged in conduct, which may
7 reasonably be said, tends to interfere with the free exercise of employee rights under the [EMRA]."
8 *AFSCME, Local 4041 v. State of Nevada, Case No. 2020-001, Item No. 861-B (2021); American Freight*
9 *Ways, Inc., 124 NLRB 146 (1959); and Caterpillar Tractor Co., 242 NLRB 523, 532 n. 30 (1979).* There
10 are three elements to a claim of interference with a protected right: "(1) the employer's action can be
11 reasonably viewed as tending to interfere with, coerce, or deter; (2) the exercise of protected activity [by
12 NRS Chapter 288]; and (3) the employer fails to justify the action with a substantial and legitimate
13 business reason." *AFSCME, Local 4041 v. State of Nevada, Case No. 2020-001, Item No. 861-B (2021)*
14 *(citing Billings and Brown v. Clark County, Item No. 751 (2012); Medeco Sec. Locks, Inc. v. NLRB, 142*
15 *F.3d 733, 745 (4th Cir. 1988); Reno Police Protective Ass'n v. City of Reno, 102 Nev. 98, 101, 715 P.2d*
16 *1321, 1323 (1986)).* Respondent's actions interfere with, coerce, or deter because the EMRB and the
17 NLRB have long held that interrogating employees concerning their protected rights is an unlawful action
18 by an employer. *See e.g., In the Matter of the Carson City Sherriff's Employees Association, Case No.*
19 *A1-045319, Item No. 88 (1979)* (respondents had interfered with the Complainant's rights by interrogating
20 members of the Association as to their union activities); *V & S ProGalv, Inc. v. N.L.R.B., 168 F.3d 270,*
21 *280 (6th Cir. 1999)* ("It is well-settled that an employer violates the [National Labor Relations Act] by
22 interrogating its employees about their union activities.").

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26 Circulating a petition to address work shifts is a clear exercise of protected activity under NRS
27 Chapter 288. Respondent cannot justify interrogating Ms. Queen because there is no substantial and
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1 legitimate business reason to do so. Moreover, the prohibited practice and finding of prohibited practice
2 does not require employer motive to interfere or of anti-union animus, nor does the violation need to be
3 successful in coercing or restraining. As such, Respondents violated the EMRA and unlawfully interfered
4 with Complainant's rights because the unlawful interrogation of Ms. Queen was coercive, can reasonably
5 be viewed as dissuading her from exercising her rights guaranteed under the EMRA, and Respondent had
6 no legitimate business purpose for this interrogation.

7
8 Complainant is entitled to a declaration from the EMRB that Respondents committed a prohibited
9 practice and violated the EMRA by unlawfully interrogating Ms. Queen concerning her union activities
10 protected under the EMRA, which included speaking with coworkers concerning shift lengths and
11 supporting a petition from her coworkers.

12 **D. CONCLUSION**

13 AFSCME requests that the EMRB declare the Respondent committed a prohibited practice and
14 violated the EMRA by unlawfully interrogating Ms. Queen concerning her union-related activities
15 protected under the EMRA, and that judgment be rendered in favor of AFSCME as follows:
16

- 17 1. Respondent engaged in a prohibited labor practice under the EMRA.
- 18 2. Respondent's actions violated NRS 288.270(1)(a) and NRS 688.620(1)(a).
- 19 3. AFSCME recover its attorneys' fees and costs incurred herein.

20 **III. LIST OF WITNESSES**

21 1. Ms. Charlene Queen, AFSCME member. Ms. Queen will testify to her discussions with co-
22 workers concerning shift lengths and working conditions, circulation of the petition on shift lengths, and
23 the interrogation to which she was subjected by Respondent's representatives concerning her protected
24 activity and the AFSCME petition addressing employee shifts and schedules.
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1 2. Mr. Nathan Miller, AFSCME member and coworker. Mr. Miller will testify to his discussions
2 with other coworkers and Ms. Queen concerning shift lengths and working conditions and the circulation
3 of the petition on shift lengths.

4 3. Moumita Ahmed, AFSCME Labor Representative. Ms. Ahmed will testify, in a limited capacity
5 and not beyond Ms. Queen's and the union's confidentiality privileges, to her discussions with Ms. Queen
6 regarding the shift lengths and working conditions, the circulation of the petition on shift lengths, and the
7 interrogation to which Ms. Queen was subjected by Respondent's representatives concerning Ms. Queen's
8 protected activity and the AFSCME petition addressing employee shifts and schedules.

9 4. Blanca Aguilar, AFSCME Labor Representative. Ms. Aguilar will testify, in a limited capacity
10 and not beyond Ms. Queen's and the union's confidentiality privileges, to her discussions with Ms. Queen
11 regarding the shift lengths and working conditions, the circulation of the petition on shift lengths, and the
12 interrogation to which Ms. Queen was subjected by Respondent's representatives concerning Ms. Queen's
13 protected activity and the AFSCME petition addressing employee shifts and schedules.

14 5. Any witnesses presented or named by the Respondent.

15 6. Complainant reserves the right to amend its list of witnesses as new witnesses become known to
16 it in this matter.

17
18
19 **IV. STATEMENT OF RELATED PROCEEDINGS**

20 There is a second Prohibited Practices Complaint filed on September 14, 2023, against the
21 Respondent for terminating Ms. Queen due to her protected activities and her exercise of rights under
22 Chapter 288 in violation of NRS 288.270. It was given EMRB Case No. 2023-029. Complainant
23 believe it may be suitable for the EMRB to combine these two cases for hearing.

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27 ///

1 **CERTIFICATE OF FILING AND SERVICE**

2 I CERTIFY THAT on the 15th day of September, 2023, I filed the above and foregoing
3 **COMPLAINANT’S PREHEARING STATEMENT** by emailing the document to
4 `emrb@business.nv.gov`.

5
6 I FURTHER CERTIFY THAT on the same date, I mailed the above and foregoing
7 **COMPLAINANT’S PREHEARING STATEMENT** by mailing the document via United States
8 Certified Mail, Return Receipt Requested, and email to the following:

9
10 State of Nevada
11 Office of the Attorney General
12 Attn: Greg Ott, Chief Deputy Attorney General
13 Nathan Holland, Deputy Attorney General
14 100 North Carson Street
15 Carson City, NV 89701
16 `gott@ag.nv.gov`
17 `nholland@ag.nv.gov`

18 */s/ Suzanne Levenson*
19 An employee of Stranch, Jennings & Garvey, PLLC

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Chief Deputy Attorney General
3 NATHAN HOLLAND (NV Bar #15247)
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7 *Attorneys for the Nevada Department of*
8 *Administration/Labor Relations Unit*

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State of Nevada
E.M.R.B.
1:39 p.m.

9 STATE OF NEVADA
10 GOVERNMENT EMPLOYMENT
11 MANAGEMENT RELATIONS BOARD

12 AFSCME, LOCAL 4041,

13 Complainant,

14 vs.

15 STATE OF NEVADA, DEPARTMENT
OF VETERANS SERVICES,
16 SOUTHERN NEVADA STATE
VETERANS HOME,

17 Respondents.

Case No. 2023-019

STATE OF NEVADA'S
PRE-HEARING STATEMENT

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19 COMES NOW Respondents, State of Nevada Department of Veteran's Services,
20 Southern Nevada State Veteran's Home, by and through its counsel, Attorney General
21 Aaron D. Ford, Chief Deputy Attorney General Greg Ott and Deputy Attorney General
22 Nathan C. Holland, hereby submits their Pre-Hearing Statement under NAC 288.250 to
23 clarify the issues for determination by the Employee-Management Relations Board ("the
24 Board") regarding *AFSCME Local 4041's Prohibited Practice Complaint* ("the Complaint")
25 filed by Complainant, AFSCME, Local 4041 ("Complainant" or "the Union").

26 I. STATEMENT OF ISSUES FOR DETERMINATION

27 1. Whether the State committed a Prohibited Practice Claim under
28 NRS 288.270(1)(a) and NRS 288.620(1)(a) by violating NRS 288.500(a) which allows for

1 employees to “[o]rganize, form, join and assist labor organization... and engage in other
2 concerted activities.”

3 II. MEMORANDUM OF LAW

4 A. Interrogation of Employees is Not Illegal.

5 An employer has a right to speak with employees so long as an interrogation
6 is not coercive. *Lane Drug Company v. NLRB*, 391 F.2d 812 (6th Cir. 1968). Interviewing
7 employees regarding union activity is not per se illegal.¹ The act of discussing the union
8 activities with the employee is legal, it is only when the interrogation reasonably tends to
9 restrain, coerce, or interfere with rights guaranteed by the act that a violation can be found.
10 In fact, “[i]nfrequent, isolated and innocuous inquires of a relatively small number of
11 employees, standing alone, do not constitute interference, restraint or coercion within the
12 meaning of section 8(a)(1) of the Act,” *N.L.R.B. v. Homemaker Shops, Inc.*, 724 F.2d 535 at
13 548-49 (6th Cir. 1984). The general position is that interrogation alone is not a prohibited
14 practice.

15 The cases cited by AFSCME support that interrogation is permissible, because they
16 each contain egregious conduct designed to interfere with organization rights, far in excess
17 of even the exaggerated claims of its complaint. For instance, *In the Matter of the Carson
18 City Sherriff's Employees Association*, Case No. A1-045319, Item No. 88 (1979) involved a
19 suspension of a union member, a demotion of a second union member, and then demoting
20 a witness for the complainant, denying him sick leave, reducing comp time and annual
21 leave. While the union in that case alleged unlawful interrogation, no finding of unlawful
22 interrogation was made. Similarly, *V & S ProGalv, Inc. v. N.L.R.B.*, 168 F.3d 270, 280 (6th
23 Cir. 1999) involved the backdrop of a charged labor environment where a recently
24 decertified union was rumored to be reorganized. Against this tense setting, the chief
25 executive officer threatened a lead employee that he would close the plant if a union
26 returned. The conduct in both cases far outstrip even the alleged conduct in the complaint.
27 Instead the conduct alleged here is far similar to cases where no violation has been found

28 ¹ *V & S ProGalv, Inc. v. N.L.R.B.*, 168 F.3d 270, 280 (6th Cir. 1999)

1 such as *N.L.R.B. v. Homemaker Shops, Inc.*, where no violation was found despite a pattern
2 of interrogation across three employees; where one employee was questioned regarding
3 where the outside union activity was originating, another was questioned regarding
4 whether she had met with union representatives and what sort of demands would be
5 forthcoming from the union, and a third was told that the company president had asked
6 him to monitor phone calls concerning the outside union. The Court found the lack of anti-
7 union animus, nor any implied warning of the consequences of supporting the outside union
8 to be persuasive in determining that the pattern of interrogation of employees was
9 permissible. Also in *N.L.R.B. v. Streamway Div. of Scott & Fetzer Co.* 691 F.2d 288 (6th Cir.
10 1982) the Court found that employees were permissibly asked if they wished to join the
11 union because of their complaints. No threats, hostility or inhibition of employee choice
12 was demonstrated.

13 The allegations here, even as taken as presented by the complainant show no
14 threats, no hostility, no animus toward the union or an ability to alter working conditions
15 or adversely impact the union or its members. The complaint simply lacks the coercive
16 allegations that were necessary to find a violation in other cases.

17 **B. Ms. Watson had legitimate reasons to questions Ms. McQueen's**
18 **Activities**

19 Contrary to the Union's claims of union animus, Ms. Watson, like Ms. Queen,
20 is a member of AFSCME. Ms. Watson is the only individual mentioned in the complaint
21 who is alleged to have any anti-union sympathies and she is a dues paying member, whose
22 contributions are (in part) funding this litigation. She fully supports the Union's general
23 efforts to support workers. However, she also understands the collective bargaining
24 agreement and when notified that employees under her supervision were violating the
25 CBA, infringing on the rights of other employees and impairing the work environment, she
26 possessed both a right and a duty to investigate the reported behavior. She had a right and
27 an obligation to investigate the employee's actions. Here Ms. Watson received notice that
28 Ms. Queen was harassing other employees during the workday to support a petition and

1 that such harassment was infringing on the rights of other employees to perform their
2 professional duties free of coercive attempts to sign a petition. When she learned of the
3 allegations against Ms. Queen, she had a short professional conversation about her
4 activities. Such conduct is unequivocally permitted.

5 The Union has provided no examples of established cases where a union member has
6 been found to have unlawfully violated another union member's right to organize. Caselaw
7 is clear that interrogation is not a per se violation, it only becomes a violation when other
8 rights are impacted by a coercive interrogation. But here, both sides of the conversation
9 were union members. Having the EMRB spend its valuable time and resources reviewing
10 what amounts to a discussion between two union members about one member
11 impermissibly pressuring other employees to sign a petition is tremendously wasteful. The
12 EMRB should dismiss this case without a hearing and the union should be ordered to pay
13 the state's costs and attorney's fees for bringing such a frivolous claim.

14 **B. STATEMENT OF RELATED PROCEEDINGS**

15 The State is not aware of any related proceedings.

16 **C. STATEMENT OF ANTICIPATED WITNESSES AND TESTIMONY**

17 1. **Mandee Bowsmith**, Administrator, State of Nevada, Department of
18 Human Resources Management, Labor Relations Unit. Ms. Bowsmith acted as Chief
19 Negotiator for Respondents. She is expected to testify regarding the relationship between
20 the State and the Union and repeated requests to be informed informally of small issues
21 regarding state agencies that interact with NRS 288 infrequently so that she can assist the
22 union in upholding its rights and ensure a harmonious relationship between the State and
23 its Union partners.

24 2. **Corine Watson**, Registered Nurse 5, Southern Nevada State Veteran's
25 Home, Department of Veteran's Affairs. Ms. Watson is expected to testify regarding the
26 conversation with Ms. Queen that is the source of the complaint and the general lack of
27 hostility and anti-union animus in the workplace. She is also expected to testify that she

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1 is a union member, generally supports the union activities and has no animus toward the
2 union that she is a member of.

3 3. **Charlene Queen**, complainant. Ms. Queen is expected to testify regarding
4 the conversation with Ms. Watson that is the source of the complaint.

5 4. **Nathan Miller**, Certified Nursing Assistant, is expected to testify that Ms.
6 Queen was bullying him to sign a petition regarding 12 hour shifts he did not want to sign
7 the petition because it affects his sleep.

8 5. **Carissa Deleeuw**, Contract Speech Therapist, is expected to testify that Ms.
9 Queen engaged in a pattern of harassment to coerce her into signing the shift petition and
10 that the pressure to sign the petition interfered with her duties.

11 6. All witnesses called by the Complainant

12 **III. ESTIMATE OF TIME NEEDED TO RESENT POSITION AT HEARING**

13 The State anticipates it will need approximately 3 hour to present its position at the
14 hearing on this matter.

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16 DATED this 22nd day of September 2023.

17 **AARON D. FORD**
18 Attorney General

19 By: 

20 **GREG OTT (NV Bar #10950)**
21 Deputy Attorney General
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23 Carson City, Nevada 89701-4717
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26 *Attorneys for the Nevada Department of*
27 *Administration/Labor Relations Unit*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an employee of the State of Nevada Office of the Attorney
3 General, and on this 22nd day of September 2023, I served a true and correct copy of the
4 foregoing **STATE OF NEVADA'S PRE-HEARING STATEMENT** via U.S. First Class
5 Certified Mail, Return Receipt Requested and electronic mail to:

6 Nathan R. Ring, Esq.
7 Jessica S. Guerra, Esq.
8 STRANCH, JENNINGS & GARVEY, PLLC
9 3100 W. Charleston Blvd., Ste. 208
10 Las Vegas, NV 89102
11 E: nring@stranchlaw.com
12 jguerra@stranchlaw.com

13 *Certified Mail Receipt: 7022 3330 0001 7667 6030*

14 SOUTHERN NEVADA STATE VETERANS HOME
15 Attn: Fred E. Wagar
16 Director of the Department of Veteran Services
17 100 Veterans Memorial Dr.
18 Boulder City, NV 89005
19 E: wagarf@nv.gov

20 *Certified Mail Receipt: 7022 3330 0001 7667 6047*

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An Employee of the
State of Nevada
Office of the Attorney General