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**FILED**  
**September 14, 2023**  
**State of Nevada**  
**E.M.R.B.**  
5:08 p.m.

10 *Attorney for Complainant*

11 Before the State of Nevada  
12 Government Employee-Management  
13 Relations Board

14 AFSCME, LOCAL 4041,

15 Complainant,

16 v.

17 STATE OF NEVADA, DEPARTMENT  
18 OF VETERANS SERVICES, SOUTHERN  
19 NEVADA STATE VETERANS HOME,

20 Respondents.

Case No.: **2023-029**

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

21 **INTRODUCTION**

22 This is a prohibited practice complaint pursuant to Nevada Revised Statutes ("NRS")  
23 288.620(1)(a) and 288.270(1)(a) based on Respondents' unlawful termination of an employee and  
24 member of the exclusive bargaining representative, the American Federation of State, County and  
25 Municipal Employees, Local 4041 ("AFSCME"), for the purpose of interfering with, restraining,  
26

1 and 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), it is a prohibited and unfair labor practice for a  
4 government employer to “willfully to . . .[i]nterfere, restrain or coerce any employee in the exercise  
5 of any right guaranteed” under the EMRA as well as “[d]ischarge . . . employee . . . because the  
6 employee has formed, joined or chosen to be represented by any employee organization.”

7 Complainant, AFSCME Local 4041, by and through its undersigned counsel, respectfully submits  
8 this Complaint and complains and alleges as follows:  
9

### 10 JURISDICTION AND PARTIES

11 1. At all times relevant herein, Complainant, AFSCME Local 4041, was and is an  
12 “employee organization” pursuant to NRS 288.040 and/or a “labor organization” pursuant to Section  
13 12 of the Act.

14 2. At all times relevant herein, Respondents were and are a “Government Employer”  
15 pursuant to NRS 288.060 and NAC 288.R056-19.2.

16 3. The Board has jurisdiction of this matter pursuant to NRS 288.110 and NRS 288.280  
17 to hear and determine “any controversy concerning prohibited practices.” NRS 288.110 also  
18 provides, in relevant part:  
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20 2. The Board may hear and determine any complaint arising out of the  
21 interpretation of, or performance under, the provisions of this chapter by the  
22 Executive Department, any local government employer, any employee, as  
23 defined in NRS 288.425, any local government employee, any employee  
organization or any labor organization . . .

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

26 4. NRS 288.270 provides, in relevant part:

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

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

3 5. NRS 288.620 provides, in relevant part:

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

6 (a) Engage in any prohibited practice applicable to a local government  
7 employer or its designated representative set forth in subsection 1 of NRS  
8 288.270, except paragraphs (e) and (g) of that subsection.

9 6. Employee organizations are required to raise before the Board issues within the  
10 jurisdiction of the Board before resorting to civil suit. *See Rosequist v. Int'l Ass'n of Firefighters*,  
11 118 Nev. Adv. Op. No. 47, 49 P.3d 651 (2002).

## 12 FACTUAL ALLEGATIONS

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

17 8. Respondent, the Southern Nevada State Veterans Home (“Respondent”), is a Nevada  
18 state-owned and operated skilled nursing home facility supported by the Department of Veteran  
19 Affairs that specifically provides 24-hour service and care to eligible veterans, their spouses, and  
20 parents.

21 9. The Respondent’s facility is broken down into three “houses,” where the residents of  
22 each house may or may not require specialized care.

23 10. Ms. Charlene Queen (“Ms. Queen”) was hired by the Respondent, the Southern  
24 Nevada State Veterans Home (“Respondent”) on August 15, 2022, as a Registered Nurse, Charge 4  
25 (“RN4”).  
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1 11. Ms. Queen was placed on a probationary period of one (1) year.

2 12. Within a couple months of her employment, Ms. Queen was given the responsibilities  
3 of being a “House Supervisor” over all three of the houses of the Respondent. In this role, she was  
4 responsible for supervising the nurses and responding to incidents in each house. She was also  
5 responsible for reporting to the Director of Nursing.

6 13. While she was given added responsibilities, she was never promoted to a higher  
7 classification. Her job title and responsibilities were still that of an RN4.

8 14. During her employment with the Respondent, Ms. Queen became an active member  
9 of AFSCME Local 4041 and engaged in lawful concerted activities for mutual aid and protection in  
10 her workplace that were known to her employer.

11 15. While employed by the Respondent, during non-work time and in non-work areas,  
12 Ms. Queen spoke with several other employees about an AFSCME circulated petition seeking to  
13 initiate a meeting with the employer regarding the employer’s change to the lengths of employee  
14 shifts from eight hours to twelve hours per day.

15 16. On the morning of July 19, 2023, Ms. Queen was summoned by her supervisor,  
16 Corine Watson (“Ms. Watson”), who is the Director of Nursing, to Ms. Watson’s office.

17 17. Ms. Watson aggressively and angrily interrogated Ms. Queen about her protected  
18 activities with her union, AFSCME, in the July 19, 2023 meeting.

19 18. Specifically, Ms. Watson asked Ms. Queen if she had asked other employees to sign  
20 a circulated petition from AFSCME, to which Ms. Queen responded that she spoke to employees  
21 about the petition and its purposes.

22 19. Ms. Queen also informed Ms. Watson that she is involved with the union’s petition,  
23 to which Ms. Watson accused Ms. Queen of acting in conflict with her and other managers and that  
24

1 the CBA does not address the nurses' shifts. Ms. Queen disagreed and explained her disagreement  
2 with Ms. Watson.

3 20. Based on Ms. Watson's interrogation of Ms. Queen, AFSCME, Local 4041, filed a  
4 Prohibited Practice Complaint on July 25, 2023 against the Respondent.

5 21. That Complaint was given EMRB Case No. 2023-019 and the allegations therein  
6 specifically named Ms. Queen as the employee and union member who was unlawfully interrogated.

7 22. A few days after AFSCME, Local 4041 filed the Prohibited Practice Complaint, Ms.  
8 Queen was scheduled for her final review to be released from probation.

9 23. She had three reviews prior to the final review and her reviews were satisfactory  
10 overall; however, in her third review and after she became more active in the union, Ms. Queen  
11 received a "Does Not Meet Standards" for the "Analyzing Situations and Materials" portion of  
12 review.

13 24. However, the criticism in the third review was directed to Ms. Queen's role as a  
14 House Supervisor and not of an RN4.

15 25. Ms. Queen's final review was postponed until July 12, 2023, where she met  
16 standards.

17 26. After administering Ms. Queen's review, Ms. Watson informed Blanche Dieket, the  
18 Human Resources Officer, that she has concerns about Ms. Queen because she "did not have the  
19 time with her to coach and train her for most of her probationary period. [Ms. Queen] has no  
20 supervisory experience, and it is apparent to [Ms. Watson] that [Ms. Queen] was provided little  
21 guidance in her role as House Supervisor."  
22

23 27. Not too long after her review, Ms. Queen was terminated from her employment with  
24 the Respondent on July 31, 2023 – fifteen (15) days before Ms. Queen's annual anniversary with the  
25 Respondent.  
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1 28. It was discovered that Ms. Watson recommended that Ms. Queen be “demoted” to  
2 Charge Nurse from a House Supervisor WPS because she needed to “gain additional supervisory  
3 experience” and asked that she serve an additional 12-month probationary period. Ms. Queen did  
4 not know nor was she informed that she was transferred from an RN4 to a House Supervisor.

5 29. In that same email, Ms. Watson specifically described Ms. Queen’s union  
6 involvement as failing to manage “uncooperative staff” and stated that she has “joined disruptive  
7 staff in pressuring others to sign a 12-hour staffing petition.”

8 30. Thus, Respondent’s representatives specifically referred to Ms. Queen’s protected  
9 activity under the EMRA in its decision to dismiss her from employment.

10  
11 **CLAIMS FOR RELIEF**  
12 **Prohibited Practice Claim under NRS 288.270; NRS 288.620**

13 31. The allegations contained in all preceding paragraphs of this complaint are  
14 incorporated herein by reference as if fully set forth herein.

15 32. Under NRS 288.620(1)(a) “[i]t is a prohibited practice for the Executive Department  
16 or its designated representative willfully to . . . [e]ngage in any prohibited practice applicable to a  
17 local government employer or its designated representative set forth in subsection 1 of NRS  
18 288.270.”

19 33. Under NRS 288.270(1)(a), it is a prohibited practice to “[i]nterfere, restrain or coerce  
20 any employee in the exercise of any right guaranteed under” the EMRA.

21 34. Under NRS 288.270(1)(d) it is a prohibited practice to “[d]ischarge or otherwise  
22 discriminate against any employee because the employee has signed or filed an affidavit, petition or  
23 complaint or given any information or testimony under this chapter, or because the employee has  
24 formed, joined or chosen to be represented by any employee organization.”  
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1 35. NRS 288.500(a) provides that “[f]or the purposes of other mutual aid or protection”  
2 employees have the right “[o]rganize, form, join and assist labor organizations... and engage in other  
3 concerted activities.”

4 36. Respondents interfered with employees’ rights guaranteed under the EMRA and  
5 violated NRS 288.620(1)(a), 288.270(1)(a), and 288.270(1)(d) when Respondent unlawfully  
6 terminated Ms. Queen from her employment for engaging in her union activities and for the purpose  
7 of interfering with, restraining, and coercing the employee from the exercise of her rights guaranteed  
8 under the EMRA.

9 37. Under NRS 288.270(1)(a), “[t]he test is whether the employer engaged in conduct,  
10 which may reasonably be said, tends to interfere with the free exercise of employee rights under the  
11 [EMRA].” *AFSCME, Local 4041 v. State of Nevada*, Case No. 2020-001, Item No. 861-B (2021)  
12 (citing *Juvenile Justice Supervisors Ass'n v. County of Clark*, Case No. 2017-020, Item No. 834  
13 (2018); *Clark Cty. Classroom Teachers Ass'n v. Clark County Sch. Dist*, Item 237 (1989)). There are  
14 three elements to a claim of interference with a protected right: “(1) the employer’s action can be  
15 reasonably viewed as tending to interfere with, coerce, or deter; (2) the exercise of protected activity  
16 [by NRS Chapter 288]; and (3) the employer fails to justify the action with a substantial and  
17 legitimate business reason.” *AFSCME, Local 4041 v. State of Nevada*, Case No. 2020-001, Item No.  
18 861-B (2021) (citing *Billings and Brown v. Clark County*, Item No. 751 (2012); *Medeco Sec. Locks,*  
19 *Inc. v. NLRB*, 142 F.3d 733, 745 (4th Cir. 1988); *Reno Police Protective Ass'n v. City of Reno*, 102  
20 Nev. 98, 101, 715 P.2d 1321, 1323 (1986)).

21 38. Here, Respondent terminated Ms. Queen from her position with Respondent after she  
22 reached all satisfactory reviews because Respondent viewed her union activity as failing to manage  
23 “uncooperative staff” and has “joined disruptive staff in pressuring others to sign a 12-hour staffing  
24 petition.”  
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1 39. Respondents violated NRS 288.270(1)(a) and NRS 288.270(1)(d) and unlawfully  
2 interfered with Complainant's rights because the unlawful termination of Ms. Queen was  
3 discriminatory, unjustified, and was intended to discourage other union members and Respondent  
4 employees from exercising their rights guaranteed under the EMRA.

5 40. The temporal proximity between Ms. Queen participating in AFSCME's complaint  
6 against Respondent demonstrates Respondent's clear intent to interfere, restrain, and coerce Ms.  
7 Queen and other of Respondent's employees. This cannot be ignored, nor can the fact that she was  
8 already interrogated for the exact behavior referenced in the final review leading to her termination  
9 from employment.

10 41. Complainant is entitled to a declaration from the EMRB that Respondents committed  
11 a prohibited practice and violated of NRS 288.270(1)(d) by unlawfully terminating Ms. Queen  
12 because of her union activities and her exercise of rights protected under the EMRA.

13  
14 **PRAYER FOR RELIEF**

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

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

20 2. Find that Respondents' unlawful termination of employee and union member,  
21 Charlene Queen, for her protected concerted activity under the EMRA is a violation of NRS  
22 288.270(1)(d) and that Respondents have committed a prohibited practice from which Respondents  
23 must immediately cease and desist;

24 3. Order that Respondents are prohibited from unlawfully terminating employees in  
25 violation of NRS 288.270(1)(a) in the future;



1 4. An order reinstating Ms. Queen to her employment with the State and compensating  
2 her with back pay;

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

5 6. Order further relief as the Board deems appropriate under the circumstances.  
6  
7

8 Date: September 14, 2023

9 Respectfully submitted,

10 /s/ Nathan R. Ring

11 Nathan R. Ring, Esq.  
12 NV Bar No. 12078  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2023, I have mailed, via Electronic Filing in portable document format as required by NAC 288.070(d)(3), and via U.S. Mail Certified Mail Return Receipt Requested a true and correct copy of AFSCME Local 4041's Prohibited Practices Complaint to Respondents, State Of Nevada, Department Of Veterans Services, Southern Nevada State Veterans Home as addressed below and I also have filed the document with the Nevada Government Employee-Management Relations Board via its email address at [emrb@business.nv.gov](mailto:emrb@business.nv.gov):

SOUTHERN NEVADA STATE VETERANS HOME  
Attn: Fred E. Wagar  
Director of the Department of Veteran Services  
100 Veterans Memorial Dr.  
Boulder City, NV 89005  
[wagarf@nv.gov](mailto:wagarf@nv.gov)

State of Nevada  
Office of the Attorney General  
Attn: Greg Ott, Chief Deputy Attorney General or  
Nathan Holland, Deputy Attorney General  
100 North Carson Street  
Carson City, NV 89701  
[gott@ag.nv.gov](mailto:gott@ag.nv.gov)  
[nholland@ag.nv.gov](mailto:nholland@ag.nv.gov)

/s/ Suzanne Levenson  
An employee of Stranch, Jennings & Garvey

1 AARON D. FORD  
Attorney General  
2 GERALD L. TAN (Bar No. 13596)  
Senior Deputy Attorney General  
3 State of Nevada  
Office of the Attorney General  
4 555 E. Washington Ave., Ste. 3900  
Las Vegas, Nevada 89101  
5 Phone: (702) 486-3584  
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6 *Attorneys for Respondent*

**FILED**  
**October 26, 2023**  
**State of Nevada**  
**E.M.R.B.**  
1:24 p.m.

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

10 AFSCME, LOCAL 4041,

11 Complainant,

12 vs.

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

15 Respondents.  
16

Case No. 2023-029

**STATE OF NEVADA, DEPARTMENT OF  
VETERANS SERVICES, SOUTHERN  
NEVADA STATE VETERANS HOME'S  
ANSWER TO AFSCME, LOCAL 4041'S  
PROHIBITED PRACTICE COMPLAINT**

17 COMES NOW, Respondent, STATE OF NEVADA, DEPARTMENT OF VETERANS  
18 SERVICES, SOUTHERN NEVADA STATE VETERANS HOME, by and through its counsel, Attorney  
19 General Aaron D. Ford and Senior Deputy Attorney General Gerald L. Tan, to answer the Complaint in  
20 this matter as follows:

21 **JURISDICTION AND PARTIES**

22 1. Answering Paragraph 1 of the **Complaint, Respondent admits that Complainant is a "labor**  
23 **organization" pursuant to NRS 288.048.**

24 2. Answering Paragraph 2 of the Complaint, Respondent states it is a member of the  
25 Executive Department pursuant to NRS 288.042.

26 3. Answering Paragraph 3 of the Complaint, Respondent states that this Paragraph consists  
27 of legal conclusions to which no response is required. To the extent a response is required, Respondent  
28 denies the allegations as the cited legal authority is incorrect.

1 4. Answering Paragraph 4 of the Complaint, Respondent states that this Paragraph consists  
2 of legal conclusions to which no response is required. To the extent a response is required, Respondent  
3 denies that it committed a prohibited practice as defined in NRS 288.270.

4 5. Answering Paragraph 5 of the Complaint, Respondent states that this Paragraph consists  
5 of legal conclusions to which no response is required. To the extent a response is required, Respondent  
6 denies that it committed a prohibited practice as defined in NRS 288.620.

7 6. Answering Paragraph 6 of the Complaint, Respondent states that this Paragraph consists  
8 of a legal conclusion to which no response is required. To the extent a response is required, Respondent  
9 states that *Rosequist v. Int'l Ass'n of Firefighters*, 118 Nev. 444 (2002), was overruled by *Allstate Ins.*  
10 *Co. v. Thorpe*, 123 Nev 565 (2007).

#### 11 FACTUAL ALLEGATIONS

12 7. Answering Paragraph 7 of the Complaint, Respondent admits the allegations therein.

13 8. Answering Paragraph 8 of the Complaint, Respondent admits the allegations therein.

14 9. Answering Paragraph 9 of the Complaint, Respondent states that the Southern Nevada  
15 State Veterans Home is divided **into three divisions called “neighborhoods,” formerly called “houses.”**

16 10. Answering Paragraph 10 of the Complaint, Respondent states that Ms. Charlene Queen  
17 was hired by Respondent on August 15, 2022, as a Registered Nurse 4.

18 11. Answering Paragraph 11 of the Complaint, Respondent states that Ms. Charlene Queen  
19 was required to serve a 12-month probationary period in accordance with Article VIII of the AFSCME  
20 Local 4041 CBA (eff. July 1, 2021, to June 30, 2023).

21 12. Answering Paragraph 12 of the Complaint, Respondent denies the allegations therein.

22 13. Answering Paragraph 13 of the Complaint, Respondent denies the allegations therein.

23 14. Answering Paragraph 14 of the Complaint, Respondent is without sufficient knowledge  
24 to answer the allegations therein, and therefore denies the same.

25 15. Answering Paragraph 15 of the Complaint, Respondent is without sufficient knowledge  
26 to answer the allegations therein, and therefore denies the same.

27 16. Answering Paragraph 16 of the Complaint, Respondent admits the allegations therein.

28 17. Answering Paragraph 17 of the Complaint, Respondent denies the allegations therein.

1 18. Answering Paragraph 18 of the Complaint, Respondent admits the allegations therein.

2 19. Answering Paragraph 19 of the Complaint, Respondent denies the allegations therein.

3 20. Answering Paragraph 20 of the Complaint, Respondent admits that Complainant filed a  
4 Prohibited Practice Complaint, Case No. 2023-019, on July 25, 2023; Respondent denies the remainder  
5 of the allegations therein.

6 21. Answering Paragraph 21 of the Complaint, Respondent admits that the complaint  
7 referenced in Paragraph 20 herein was given EMRB Case No. 2023-019 and that such complaint alleged  
8 that Ms. Charlene Queen was unlawfully interrogated, but Respondent specifically denies that it engaged  
9 in a prohibited practice.

10 22. Answering Paragraph 22 of the Complaint, Respondent denies the allegations therein.

11 23. Answering Paragraph 23 of the Complaint, Respondent admits that Ms. Charlene Queen  
12 received a 3-month, 7-month, and 11-month performance evaluation; that her reviews were satisfactory  
13 overall; and that her 11-month performance evaluation noted a **“Does Not Meet Standards”** for the job  
14 **element “Analyzing Situations and Materials.”** Respondent is without sufficient knowledge regarding  
15 **when Ms. Charlene Queen “became more active in the union.”** Respondent denies that it engaged in a  
16 prohibited practice.

17 24. Answering Paragraph 24 of the Complaint, Respondent denies the allegations therein.

18 25. Answering Paragraph 25 of the Complaint, Respondent denies the allegations therein.

19 26. Answering Paragraph 26 of the Complaint, Respondent admits that Ms. Corine Watson  
20 sent an email to Ms. Blanche Dieket on July 12, 2023, regarding Ms. Charlene Queen, which contains  
21 the statements quoted in Paragraph 26, among other statements. Respondent denies the remainder of the  
22 allegations therein.

23 27. Answering Paragraph 27 of the Complaint, Respondent states that Ms. Charlene Queen  
24 was released from probation on July 31, 2023.

25 28. Answering Paragraph 28 of the Complaint, Respondent is without sufficient knowledge  
26 to answer the allegations therein, and therefore denies the same.

27 29. Answering Paragraph 29 of the Complaint, **Respondent admits that Ms. Charlene Queen’s**  
28 **Probationary Performance Evaluation dated July 24, 2023, contains the statements quoted in Paragraph**

1 29, among other statements. Respondent denies the remainder of the allegations therein.

2 30. Answering Paragraph 30 of the Complaint, Respondent denies the allegations contained  
3 therein.

4 **CLAIMS FOR RELIEF**

5 **Prohibited Practice Claim under NRS 288.270; NRS 288.620**

6 31. Answering Paragraph 31 of the Complaint, Respondent repeats its responses to the  
7 allegations above.

8 32. Answering Paragraph 32 of the Complaint, Respondent states that this Paragraph states a  
9 legal conclusion to which no response is required. To the extent a response is required, Respondent  
10 denies that it engaged in a prohibited practice.

11 33. Answering Paragraph 33 of the Complaint, Respondent states that this Paragraph states a  
12 legal conclusion to which no response is required. To the extent a response is required, Respondent  
13 denies that it engaged in a prohibited practice.

14 34. Answering Paragraph 34 of the Complaint, Respondent states that this Paragraph states a  
15 legal conclusion to which no response is required. To the extent a response is required, Respondent  
16 denies that it engaged in a prohibited practice.

17 35. Answering Paragraph 35 of the Complaint, Respondent states that this Paragraph states a  
18 legal conclusion to which no response is required. To the extent a response is required, Respondent  
19 denies that it engaged in a prohibited practice.

20 36. Answering Paragraph 36 of the Complaint, Respondent denies the allegations therein.

21 37. Answering Paragraph 37 of the Complaint, Respondent states that this Paragraph states a  
22 legal conclusion to which no response is required. To the extent a response is required, Respondent  
23 denies that it engaged in a prohibited practice.

24 38. Answering Paragraph 38 of the Complaint, Respondent denies the allegations therein.

25 39. Answering Paragraph 39 of the Complaint, Respondent denies the allegations therein.

26 40. Answering Paragraph 40 of the Complaint, Respondent denies the allegations therein.

27 41. Answering Paragraph 41 of the Complaint, Respondent denies the allegations therein.

28 ///

**AFFIRMATIVE DEFENSES**

1. Complainant fails to state a claim upon which relief can be granted.
2. **Complainant’s claims are time-barred by the** applicable statutes of limitations or other applicable law or regulation.
3. **Complainant’s claims are barred** by the doctrine of unclean hands.
4. Respondent is immune based on the doctrine of sovereign immunity, including all express and implied exceptions to NRS 41.031, and Amendment XI of the Constitution of the United States.
5. Respondent is immune based on discretionary-act immunity.
6. The Complaint fails to comply with the requirements of NAC 288.200, *et seq.*
7. The Board lacks jurisdiction over this matter.
8. The Complaint lacks probable cause.
9. Complainant has not exhausted contractual remedies.
10. Complainant failed to prosecute its claims.
11. **Complainant’s claims are spurious and/or frivolous.**
12. The Complaint presents only issues that have been previously decided by the Board.
13. The Board lacks authority to grant the relief requested by Complainant.

The affirmative defenses herein are asserted for purposes of non-waiver. Respondent reserves the right to assert additional affirmative defenses as further information is discovered during the course of these proceedings.

WHEREFORE, having fully answered Complainant’s Complaint, Respondent hereby requests an Order dismissing the Complaint with prejudice, an **award of attorney’s fees and costs incurred by Respondent**, and for such other relief that the Board deems just.

DATED this 26th day of October, 2023.

AARON D. FORD  
Attorney General

By: /s/ Gerald Tan  
GERALD L. TAN  
Senior Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that  
3 on this 26th day of October, 2023, I served a true and correct copy of the foregoing **STATE OF**  
4 **NEVADA, DEPARTMENT OF VETERANS SERVICES, SOUTHERN NEVADA STATE**  
5 **VETERANS HOME’S ANSWER TO AFSCME, LOCAL 4041’S PROHIBITED PRACTICE**  
6 **COMPLAINT**, by electronic service to:

7 Nathan R. Ring, Esq.  
8 Jessica S. Guerra, Esq.  
9 STRANCH, JENNINGS & GARVEY, PLLC  
10 3100 W. Charleston Blvd., Ste. 208  
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12 E: [nring@stranchlaw.com](mailto:nring@stranchlaw.com)  
13 [jguerra@stranchlaw.com](mailto:jguerra@stranchlaw.com)

14 */s/ Anela Kaheaku*  
15 An employee of the Office of the Attorney General



1 AARON D. FORD  
Attorney General  
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Senior Deputy Attorney General  
3 State of Nevada  
Office of the Attorney General  
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6 *Attorneys for Respondent*

FILED  
November 16, 2023  
State of Nevada  
E.M.R.B.  
3:07 p.m.

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

10 AFSCME, LOCAL 4041,

11 Complainant,

12 vs.

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

15 Respondents.

Case No. 2023-029

**STATE OF NEVADA, DEPARTMENT OF  
VETERANS SERVICES, SOUTHERN  
NEVADA STATE VETERANS HOME'S  
PREHEARING STATEMENT**

16  
17 COMES NOW, Respondent, STATE OF NEVADA, DEPARTMENT OF VETERANS  
18 SERVICES, SOUTHERN NEVADA STATE VETERANS HOME, by and through its counsel, Attorney  
19 General Aaron D. Ford, and Senior Deputy Attorney General Gerald L. Tan hereby submits its Prehearing  
20 Statement pursuant to NAC 288.250.

21 **I. INTRODUCTION**

22 Complainant cannot establish that Respondent violated either NRS 288.270(1)(a) or (d). The  
23 evidence will show that Charlene Queen was lawfully released from probation due to a documented lack  
24 of good clinical judgment that resulted in poor patient outcomes. Respondent's conduct cannot  
25 reasonably be viewed as tending to interfere with Ms. Queen's rights under NRS Chapter 288 (EMRA),  
26 and Respondent's substantial and justified reasons for releasing Ms. Queen far outweigh any hypothetical  
27 interference with Ms. Queen's rights. Additionally, there is no evidence that Respondent committed  
28 discrimination by releasing Ms. Queen from probation based on union activity. Respondent would have

1 released Ms. Queen from probation regardless of her union activity, and Complainant will be unable to  
2 **show that Respondent's well-documented** reasons were merely pretextual. For the reasons stated herein,  
3 Respondent respectfully requests that this Board rule in favor of Respondent on all claims.

## 4 **II. STATEMENT OF FACTS**

5 The Nevada Department of Veterans Services (NDVS) is the State agency tasked with providing  
6 care and assistance to Nevada veterans and their families, including assisting with claims for benefits,  
7 providing burial support at the State veteran cemeteries, helping integrate veterans into Nevada  
8 communities, and providing skilled nursing care. NDVS operates two veterans homes, including the  
9 Southern Nevada State Veterans Home (SNSVH), which is a 180-bed skilled nursing facility that  
10 provides 24/7 nursing care to eligible veterans, their spouse, and Gold Star parents. Residents are  
11 admitted with a wide range of serious medical conditions, including cancer, Alzheimer's, and dementia.  
12 As such, employing competent and skilled nursing staff is of the utmost importance.

13 Respondent hired Charlene Queen to work at SNSVH as a Registered Nurse IV on August 15,  
14 2022, subject to a one-year probationary period. She was immediately assigned as House Supervisor,  
15 which is an internal post that assists with coordinating staffing levels as well as performs nursing duties.  
16 Ms. Queen expressly acknowledged that she would perform the duties of a House Supervisor as needed.

17 On November 15, 2022, Ms. Queen received a 3-month performance evaluation, which provided  
18 **an overall rating of "Meets Standards."** Around December 29, 2022, it was discovered that Ms. Queen  
19 **was out sick due to COVID from November 2, 2022, to November 12, 2022. Respondent's payroll clerk**  
20 was informed that Ms. Queen did not have sufficient sick leave to cover that period, but Ms. Queen did  
21 **not indicate "Leave Without Pay" (LWOP) on her timesheet.** Thus, Ms. Queen was paid for some days  
22 that she did not come to work and had no approved leave. Another employee reported that Ms. Queen  
23 knowingly submitted her timesheet without reporting LWOP because Ms. Queen needed the money.  
24 When Ms. Queen was advised that she needed to pay back those non-covered hours, she inquired about  
25 how she could pay back those wages.

26 As a result of the above timesheet incident, on January 9, 2023, **Ms. Queen's then-supervisor,**  
27 Poppy Helgren (Director of Nursing Services) issued a Documented Oral Warning citing various  
28 regulations and policies regarding submitting a dishonest timesheet for personal gain. Ms. Queen noted

1 that she disagreed with the write-up and that she believed someone else submitted the timesheet on her  
2 behalf. Electronic records indicated that Ms. Queen, herself, submitted the timesheet.

3           Around April 19, 2023, Ms. Queen received a 7-month performance evaluation from Corine  
4 Watson, then-Interim Director of Nursing Services. Notably, **Ms. Watson had only been Ms. Queen's**  
5 **direct report for about 30 days by this time. Ms. Queen received an overall rating of "Meets Standards,"**  
6 but Ms. Watson advised Ms. Queen to focus on communication with the scheduler when there are call-  
7 offs to ensure consistency in staffing protocols, and to complete State trainings as required. Ms. Queen  
8 agreed with the evaluation.

9           On June 20, 2023, Ms. Watson received an email from Human Resources that advised that  
10 **Ms. Queen's probationary period was going to end on August 15, 2023, and provided items to consider**  
11 **in determining whether Ms. Queen would pass her probation or be released. Ms. Watson responded: "We**  
12 **may have some issues." Ms. Watson** noted that: (1) Ms. Queen had another incident regarding timesheet  
13 accuracy; (2) Ms. Queen was resistant to directions and completing readmission paperwork; and  
14 (3) Ms. Queen was unable to supervise CNAs without **Ms. Watson's involvement.** Ms. Watson also noted  
15 that she had supervised Ms. Queen for only 30 days prior to the last evaluation, but now Ms. Watson had  
16 **a much clearer picture of Ms. Queen's capabilities.** It appeared to Ms. Watson that a House Supervisor  
17 position was too much for Ms. Queen and that perhaps Ms. Queen should be assigned as Charge Nurse  
18 over a single neighborhood, rather than the entire facility.

19           On July 12, 2023, Ms. Watson sent an email to Human Resources that stated that she was on the  
20 **fence with Ms. Queen's probationary** period due to errors that should not be recurring after 11 months  
21 on the job. Ms. Watson provided Ms. Queen an 11-month performance evaluation, which gave  
22 **Ms. Queen an overall rating of "Meets Standards," but rated her as "Does Not Meet Standards" under the**  
23 **job element "Analyzing Situations and Materials." Ms. Watson noted that Ms. Queen was very pleasant**  
24 and always courteous, but also noted that she had issues with mandating staff to ensure safe staffing  
25 numbers, and that Ms. Queen needed to improve on analyzing and managing clinical priorities, such as  
26 completing readmissions, completing clinical meeting follow-ups, and assisting with short-term  
27 admissions.

1 Overall, Ms. Watson believed that Ms. Queen could improve over the next two weeks. However,  
2 after two weeks, Ms. Queen was not showing improvement. Specifically, Ms. Watson noted three  
3 separate incidents where Ms. Queen failed to follow physician orders as well as reasonable instructions  
4 from Ms. Watson, which resulted in poor patient outcomes. Ms. Watson also noted that she received  
5 complaints from other staff that Ms. Queen was pressuring them during work hours to sign a staffing  
6 petition. As a union member herself, Ms. Watson was **not criticizing Ms. Queen's** right to engage in  
7 union activity, but simply noted that the staff complaints are not conducive to a positive work  
8 environment or the expectations of a House Supervisor. It was initially considered to move Ms. Queen  
9 to a different post, but it was ultimately decided that her lack of good clinical judgment was a liability to  
10 SNSVH. Accordingly, Ms. Queen was released from probation effective July 31, 2023.

### 11 **III. STATEMENT OF ISSUES OF FACT AND LAW TO BE DETERMINED BY BOARD**

12 Issue 1: Whether Complainant can establish **that Respondent's** release of Ms. Queen from  
13 probation can reasonably be viewed as tending to interfere with Ms. **Queen's rights under the EMRA.**

14 Issue 2: **Whether Respondent's substantial** and legitimate business reasons for releasing  
15 Ms. Queen from probation outweigh any alleged **interference with Ms. Queen's rights under the EMRA.**

16 Issue 3: Assuming Ms. Queen engaged in a protected activity, whether Complainant can establish  
17 that such activity was a **motivating factor in Respondent's decision** to release Ms. Queen from probation.

18 Issue 4: Whether Respondent would have released Ms. Queen from probation regardless of  
19 whether Ms. Queen engaged in a protected activity.

20 Issue 5: Whether Complainant can establish **that Respondent's stated reasons for releasing**  
21 Ms. Queen from probation were merely pretextual.

### 22 **IV. POINTS AND AUTHORITIES**

#### 23 **A. Respondent Did Not Interfere in the Exercise of Ms. Queen's Rights in Violation of** 24 **NRS 288.270(1)(a)**

25 Complainant cannot establish that Respondent interfered in the exercise of **any of Ms. Queen's**  
26 rights under the EMRA. Under NRS 288.270(1)(a), it is **prohibited practice** to “willfully...[i]nterfere,  
27 restrain or coerce any employee in the exercise of **any right guaranteed under [the EMRA].”** The test for  
28 **an interference claim is “whether** the employer engaged in conduct, which may reasonably be said, tends

1 to interfere with the free exercise of employee **rights under the [EMRA].**” *Nye County Law Enforcement*  
2 *Association v. Nye County*, Case No. 2020-025, Item No. 872, at 7 (2021) (citing *Juvenile Justice*  
3 *Supervisors Ass’n v. County of Clark*, Case No. 2017-020, Item No. 834 (2018) (internal quotation marks  
4 omitted)). **“There are three elements to a claim of interference with a protected right: (1) the employer’s**  
5 **action can be reasonably viewed as tending to interfere with, coerce, or deter; (2) the exercise of protected**  
6 **activity [under the EMRA]; and (3) the employer fails to justify the action with a substantial and**  
7 **legitimate business reason.”** *Id.* (citing *AFSCME, Local 4041 v. State of Nevada*, Case No. 2020-002,  
8 Item No. 862-B (2021)) (internal quotation marks and other citations omitted). Following NLRB-related  
9 precedent, this Board has stated that “[i]f protected activity is implicated, the well-settled test for  
10 [interference] violations is whether, under all the circumstances, the employer’s **conduct may reasonably**  
11 **tend to coerce or intimidate employees.”** *Id.* at 8 (citing *Medeco Sec. Locks, Inc. v. N.L.R.B.*,  
12 142 F.3d 733, 741 (4th Cir. 1998)) (quotation marks omitted). In answering that question, this Board  
13 **“must balance the employee’s protected right against any substantial and legitimate business justification**  
14 **that the employer may give for the infringement.”** *Id.* at 9. Accordingly, there is no violation of  
15 NRS 288.270(1)(a) if the business justification for **the employer’s action outweighs the interference (if**  
16 **any) with the employee’s specified right under the EMRA.** *Id.*

17 1. Ms. Queen’s probationary release cannot reasonably be viewed as tending to interfere with  
18 Ms. Queen’s rights under the EMRA.

19 As a preliminary matter, Ms. Queen was a probationary employee. Under Nevada law, State  
20 employers have heightened discretion to reject probationary employees for any lawful reasons.  
21 NAC 284.458(1). That is particularly important here as this Board’s prior decisions often analyzed  
22 prohibited practice claims based upon disciplinary action. But a release from probation is not disciplinary  
23 action. As stated in Chief Justice Steffen’s dissenting opinion in *Int’l Ass’n of Firefighters, Loc. No. 1285*  
24 *v. City of Las Vegas*:

25 Discharge and disciplinary procedures properly apply to regular employees. They do  
26 not apply to probationary employees since, by definition, such an employee is on trial,  
27 and if he or she does not prove himself or herself qualified, the termination is not a  
28 form of discipline, but simply an exercise of the right to evaluate the probationer’s work  
performance and terminate the employee for not measuring up to the requirements or  
expectations of regular employee status.

1 112 Nev. 1319, 1327 (1996) (dissent).

2 Here, Respondent released Ms. Queen from probation because of a continued lack of clinical  
3 judgment that resulted in poor patient outcomes. In other words, Ms. Queen was not “measuring up to  
4 the requirements or expectations of regular employee status.” *Id.* Additionally, the evidence will show  
5 that Respondent released Ms. Queen because of her actions as an individual State employee, not because  
6 of actions taken in her capacity as a union member. This Board has long viewed that such distinction is  
7 critical in analyzing alleged violations of NRS 288.270(1)(a). *See Jones, et al. v. City of North Las Vegas,*  
8 **Case No. A-001673, Item No. 18, at 3 (1974)** (“The thrust of [NRS 288.270(1)(a), (c), and (d)] is that the  
9 conduct of the employer is improper if it is taken against the employee because of his activities relative  
10 to an employee organization as opposed to actions taken as an individual local government employee and  
11 unrelated to any such organization.”); *DuClercque, et al. v. City of Sparks*, Case No. A1-045305, Item  
12 No. 66 (1977); *Ehlers, et al. v. City of North Las Vegas, et al.*, Case No. A1-045325, Item No. 94 (1980).

13 In *Jones*, the complainant union authored a two-page letter entitled, “An Open Letter to the  
14 Citizens of North Las Vegas,” which expressed concerns with the inadequacies of the City’s police  
15 department. Case No. A-001673, Item No. 18, at 2. The complainant union released the letter to the Las  
16 Vegas Sun, which wrote a column that discussed the letter at length. *Id.* Thereafter, complainant Gene  
17 Jones (union president), at the direction of the union members, spoke about the problems during a meeting  
18 of the City Council of North Las Vegas. *Id.* Three days later, the City issued a formal reprimand against  
19 Mr. Jones expressly related to the issuance of the open letter and his appearance before the City Council,  
20 **alleging that Mr. Jones’s conduct** violated municipal ordinances and police department rules. *Id.* at 4-5.  
21 At the same time, the City issued a letter to Mr. Jones and several union members that expressed  
22 **dissatisfaction with the union’s contact** with the press and stated that any similar conduct in the future  
23 would result in withdrawal of **the union’s recognition**. *Id.* at 5. Applying NRS 288.270(1)(a), (c), and  
24 (d), collectively, this Board concluded that the City issued the reprimand and threatening letter because  
25 **of actions taken in the complainants’ capacity** as union members, not as individual employees, and  
26 therefore the City violated NRS Chapter 288. *Id.* at 6.

27 Similarly, in *DuClercque*, the complainant union had concerns regarding understaffing at the  
28 **City’s fire department and** agreed that they would issue a press release once they felt that the understaffing

1 became a safety issue. Case No. A1-045305, Item No. 66, at 1. Less than one month later, a fire broke  
2 out in a two-story apartment building that necessitated a general alarm and the call back of off-duty  
3 personnel, and resulted in severe property damage. *Id.* at 2. After the fire was extinguished, the union  
4 met and determined that the fire jeopardized personnel safety because of understaffing, and that it was  
5 appropriate to issue the previously discussed press release regarding the understaffing concerns. *Id.*  
6 Complainant Paul DuClercque spoke with a Reno Evening Gazette reporter as spokesman for the union,  
7 but requested that no names be included in the article. *Id.* Nonetheless, the article identified  
8 Mr. DuClercque as a spokesman for the union and quoted **him as saying: “Had the fire department had**  
9 **additional firepower on the initial response, the loss of property might not have been so severe.”** *Id.* The  
10 day after the article was published, the **City’s Fire Chief sent a letter to** the City Manager requesting that  
11 Mr. DuClercque be suspended for violations of fire department rules and regulations, and Mr. DuClercque  
12 ultimately received a one-day suspension for the same. *Id.* Analyzing NRS 288.270(1)(a), (c), and (d),  
13 collectively, and citing *North Las Vegas Police Officers Ass’n, Inc.*, Item No. 18, this Board concluded  
14 **that the sole reason for Mr. DuClercque’s suspension was** his statements that were made in his capacity  
15 as a union member, not as an individual employee, and thus his suspension violated NRS Chapter 288.  
16 *Id.* at 8.

17 Finally, in *Ehlers*, complainant Jay Ehlers (union president) addressed the City Council of North  
18 Las Vegas regarding a possible **misuse of the police “Ride-Along”** program by one of the City  
19 Councilman. Case No. A1-045325, Item No. 94, at 3. Mr. Ehlers also issued a press release regarding  
20 the same incident at the direction of the union. *Id.* Thereafter, the Chief of the police department issued  
21 an inter-office memorandum disciplining Mr. Ehlers specifically for his appearance before the City  
22 Council and the related press release. *Id.* at 5. Again, analyzing NRS 288.270(1)(a), (c), and (d),  
23 collectively, this Board concluded that the discipline against Mr. Ehlers was based solely on actions done  
24 in his capacity as union president, not as an individual employee, and thus his discipline violated  
25 NRS Chapter 288. *Id.* at 5-6.

26 Here, the evidence will show that Ms. Queen was released from probation because of actions she  
27 took in her capacity as an individual employee, not as a union member. Ms. Queen was a Registered  
28 Nurse IV, and the basis for her release from probation was a continued lack of good clinical judgment

1 that resulted in bad patient outcomes. Thus, this matter stands in stark contrast to *Jones, DuClercq*, and  
2 *Ehlers*, where the sole basis for adverse action was employee conduct that was done in their capacity as  
3 a union member, not an individual employee. **Ms. Queen's cited performance** issues were unquestionably  
4 related to her job as a Registered Nurse IV, so there is no serious argument that **Ms. Queen's probationary**  
5 release would have a chilling effect on union activity. Accordingly, **Respondent's conduct cannot**  
6 reasonably be viewed as tending to interfere **with Ms. Queen's rights** under the EMRA.

7 **The entirety of Complainant's interference claim relies solely on a statement from Ms. Queen's**  
8 supervisor, Corine Watson, that described staff reports of Ms. Queen pressuring others to sign a 12-hour  
9 **staffing petition. Complainant's reliance** on that statement is misplaced.

10 **In Ms. Watson's memorandum** supporting the recommended release from probation, she stated  
11 as follows:

12 In addition, instead of managing uncooperative staff, Charlene [Queen] has joined  
13 disruptive staff in pressuring others to sign a 12-hour staffing petition. When  
14 questioned about the staff report of her pressuring him and a witness report of this  
15 unprofessional conduct, she stated that she was advocating for staff and does not  
16 believe that she was pressuring anyone. A credible Medication Nurse reported when  
17 Charlene is on duty, nurses are pulled from medication pass to go to the dining room  
18 while she sits in the office. The above staff complaints are not conducive to a positive  
19 work environment or the expectation of a House Supervisor.

20 Respondent acknowledges that Ms. Queen has a conditional right to advocate for staff and to  
21 circulate a petition pursuant to NRS Chapter 288, and the evidence will show that Ms. Queen would have  
22 been released from probation regardless of her alleged union activity. But even assuming there was some  
23 **relation between Ms. Queen's probationary release and her pressuring others to sign a petition**, that alone  
24 is not sufficient to find a violation of NRS 288.270(1)(a). As this Board stated, a protected activity does  
25 **not equate to "an unrestricted right to interrupt the workplace."** *Teamsters, Chauffeurs, Warehousemen*  
26 *& Helpers, and Professional Clerical, Public and Miscellaneous Employees, Local Union No. 533 v.*  
27 *Humboldt General Hospital*, Case Nos. A1-045459, A1-045460, Item No. 246, at 9 (1990).

28 **This Board's decision in *Taylor v. Clark County School District, et al.***, illustrates that principle.  
Case No. A1-045896, Item No. 648A (2007). In *Taylor*, complainant Ronald Taylor was a teacher who  
was displeased with the incumbent union and used the **school district's online platform to criticize the**



1 incumbent union as well as seek formation of a competing union. *Id.* at 2. In order to use the online  
2 platform, teachers had to comply with the Acceptable Use Policy (AUP). *Id.* at 7. The incumbent union  
3 complained that the school district was effectively interfering with the incumbent union by allowing  
4 Mr. Taylor to make such posts **on the school district's website.** *Id.* at 2. **Some of Mr. Taylor's postings**  
5 **did not comply with the AUP and were pulled from the website.** *Id.* at 7. Mr. Taylor continued to post  
6 messages that did not comply with the AUP, which ultimately led the school district to limit his use of  
7 the website. *Id.* **This Board expressly acknowledged that Mr. Taylor had the right to form a**  
8 **competing union.** *Id.* at 8. Nonetheless, this Board found that the school district did not interfere with  
9 **Mr. Taylor's rights under NRS Chapter 288 but was merely seeking compliance with applicable rules**  
10 **and regulations.** *Id.* Therefore, Mr. Taylor failed to meet his burden of proof that the actions taken  
11 against him interfered with his rights to form a competing union. *Id.*

12 Here, Complainant cannot rely solely on some alleged relation between **Ms. Queen's probationary**  
13 **release and a protected activity.** As illustrated in *Taylor*, the implication of a protected activity is not *per*  
14 *se* evidence of interference under NRS 288.270(1)(a). Indeed, in *Taylor*, this Board acknowledged that  
15 Mr. Taylor had the right to form a competing union, that he was using **the school district's website to**  
16 **solicit support for a competing union, and that the school district limited Mr. Taylor's access to the site**  
17 **because of such posts.** Nonetheless, this Board still concluded that the school district did not interfere  
18 **with Mr. Taylor's rights. Similarly, here, while Ms. Watson's statements** may arguably relate to  
19 **Ms. Queen's EMRA rights, there was still no interference** because Ms. Watson was responding to staff  
20 complaints that they were being pressured by Ms. Queen to sign a staffing petition during work hours,  
21 which in fact would constitute a prohibited practice by Ms. Queen pursuant to NRS 288.270(2)(a). *See,*  
22 *e.g., Bisch v. Las Vegas Metropolitan Police Department*, Case No. A1-045955, Item No. 705B, at 9  
23 (2010) (respondent offered legitimate explanation for alleged prohibited practice where subject  
24 investigation was based on citizen complaint); *see also Nye County Law Enforcement Association v. Nye*  
25 *County*, Case No. 2020-025, Item No. 872 (2021) (investigation into union members not prohibited  
26 practice where such investigation was requested by other union members). Therefore, even assuming  
27 **Ms. Queen's probationary release had some relation to her EMRA rights, it was nonetheless proper for**  
28 Ms. Watson to note the staff complaints regarding being pressured by Ms. Queen to sign the staffing

1 petition. And in any event, the reason for Ms. Queen's probationary release was her lack of good clinical  
2 judgment, not her union activity. Therefore, Ms. Watson's conduct cannot reasonably be viewed as  
3 interfering with Ms. Queen's rights.

4 2. Respondent's substantial and legitimate business reasons for releasing Ms. Queen from  
5 probation far outweigh any alleged interference with Ms. Queen's rights under the EMRA.

6 Assuming Complainant can establish that Ms. Queen's probationary release can be reasonably  
7 viewed as tending to interfere with Ms. Queen's rights, it still cannot establish a violation of  
8 NRS 288.270(1)(a) because Respondent's substantial and legitimate business reasons far outweigh any  
9 alleged interference. During Ms. Queen's probationary period, Ms. Watson noted that Ms. Queen  
10 continued to lack good clinical judgment, which resulted in bad outcomes for three separate residents  
11 (identified as Resident A, B, and C to comply with HIPAA).

12 Regarding Resident A, Ms. Watson noted:

13 In June 2023, Charlene was trained by the Medical Records Director on how to admit  
14 a short-term resident. On 07/11/23, she assisted the Falconer Charge Nurse with a  
15 short-term admission for Resident A. The physician orders for COVID testing and labs  
16 were not carried out. On 07/19/23, eight days post admission, the resident's primary  
17 care physician requested that he be tested for COVID due to the resident being  
18 symptomatic. The COVID results were positive. The resident was admitted eight days  
19 within a COVID incubation period, which means that he was most likely COVID  
20 positive upon admission. Failure to follow physician orders resulted in a missed  
21 opportunity to prescribe Paxlovid (antiviral therapy), which must be given within 48  
22 hours of COVID infection. The resident was transferred to the COVID unit, coded,  
23 and passed away within 24 hours of being tested. COVID testing upon admission as  
24 the physician ordered may have given an opportunity for antiviral treatment. In  
25 addition, two of the resident's caregivers were later diagnosed with COVID, which put  
26 the neighborhood at risk for the spread of COVID. [Emphasis in original.]

27 Regarding Resident B, Ms. Watson noted:

28 Resident B was readmitted on 07/19/23. Charlene discussed his readmission on the  
phone with this supervisor [Ms. Watson] three times prior to his return. She was given  
instructions not to readmit the resident without him already being admitted to hospice  
because he had orders for nothing by mouth and did not have a g-tube for nutrition.  
This was discussed at length with Charlene, but she failed to follow instructions. The  
outcome was the resident arrived at the home as a full code with a prognosis of a few  
days to live and no access for nutrition or medications putting the home at risk for  
liability. He could not be readmitted and was sent back to the hospital at 11:00 pm.  
On 07/20/23, Charlene continued to not follow instructions regarding this readmission.

1 She was instructed by this supervisor to ensure that she received a discharge summary  
2 **prior to coordinating the resident's transport.** The resident returned to the home via  
3 **ambulance after Charlene's shift ended and was still not admitted to hospice care and**  
4 there was no discharge summary received. This supervisor personally worked with the  
5 hospice nurse onsite for orders and guardian approval for hospice to ensure the home  
6 was not at risk for liability and to prevent the resident from being returned to the  
7 hospital a second time. [Emphasis in original.]

8 Regarding Resident C, Ms. Watson noted:

9 A new resident concern has been brought to this supervisor's **attention by the Falconer**  
10 **Nurse Manager.** Resident C [personal identifier omitted] was readmitted to the home  
11 by Ms. Queen on November 1, 2022. She failed to carry out physician orders for  
12 oncology follow-up. The error was [not] identified until on 07/24/23, which is 9  
13 months after the resident **should have had an oncology follow-up.** Ms. Queen's failure  
14 to follow orders has resulted in a delay in medical treatment. [Emphasis in original.]

15 The above three incidents illustrate a serious lack of good clinical judgment that is unacceptable  
16 for a registered nurse serving Nevada's **veteran community.** As stated above, SNSVH is tasked with  
17 providing 24/7 nursing care to eligible veterans, their spouse, and Gold Star parents. Residents have a  
18 wide range of medical conditions, including cancer, Alzheimer's, and dementia. It was completely  
19 unacceptable for Ms. Queen to fail to follow physician instructions. It was completely unacceptable for  
20 Ms. Queen to fail to follow reasonable instructions from her supervisor regarding admission of a resident  
21 with serious medical conditions. It was completely unacceptable for Ms. Queen to fail to carry out a  
22 physician-ordered oncology follow-up, resulting in a nine-month delay in care. Each of the above  
23 incidents had a direct impact on patient care. **Ms. Queen's substandard** clinical judgment has no place in  
24 SNSVH, and any hypothetical **interference with Ms. Queen's EMRA** rights is far outweighed by  
25 **Respondent's substantial and legitimate** interest in providing competent nursing care to Nevada's **veteran**  
26 **community.** Therefore, Ms. Queen's probationary release did not violate NRS 288.270(1)(a).

27 **B. Respondent Did Not Discharge or Otherwise Discriminate Against Ms. Queen in Violation**  
28 **of NRS 288.270(1)(d)**

Complainant cannot establish that Respondent discharged or otherwise discriminated against  
Ms. Queen because of union activity. Under NRS 288.270(1)(d), it is prohibited practice to  
"willfully...[d]ischarge or otherwise discriminate against any employee because the employee has signed  
or filed an affidavit, petition or complaint or given any information or testimony under [the EMRA], or

1 because the employee has formed, joined or chosen **to be represented by any employee organization.**”  
2 Such claims are analyzed under a three-part test: (1) the employee must make a *prima facie* showing  
3 sufficient to support the inference that the protected activity was a **motivating factor in the employer’s**  
4 decision; (2) if established, the burden shifts to the employer to demonstrate by a preponderance of the  
5 evidence that the same action would have been taken regardless of the protected activity; and (3) if  
6 established, the burden shifts back to the employee to **show that the employer’s** stated reason is merely a  
7 pretext. *Bonner, et al. v. City of North Las Vegas*, Case No. 2015-027, Item No. 820, at 7 (2017) (citing  
8 *Reno Police Protective Ass’n v. City of Reno*, 102 Nev. 98 (1986), as modified by *Bisch v. Las Vegas*  
9 *Metro. Police Dep’t*, 129 Nev. 328 (2013)). As to the employee’s initial *prima facie* showing, “it is not  
10 enough for the employee to simply put forth evidence that is capable of being believed; rather, this  
11 evidence must actually be believed by the factfinder.” *Bisch*, 129 Nev. at 340. “Only upon meeting this  
12 burden of persuasion does the burden of proof shift to the employer.” *Id.* Additionally, this Board also  
13 stated that “mere ‘suspicion’ alone is not enough to conclusively establish that union activity was the sole  
14 reason, or the real reason, for discharge.” *Water Employees Association v. Las Vegas Valley Water*  
15 *District*, Case No. A1-045538, Item No. 326, at 3 (1994) (citing *Becker v. Washoe Medical Center*, Case  
16 No. 1, Item No. 1 (1970)). “[E]ven if an employee has extensively engaged in union activity to the  
17 displeasure of the employer and is subsequently discharged, there has been no prohibited practice  
18 committed (and the employee has no right to be reinstated) if the employer can show that the discharge  
19 was for any legitimate reasons other than union membership or activity.” *Id.* “The fact than an employee  
20 cannot be discharged for labor union activity does not give [her] a protective shield against being  
21 discharged for any other reason even if it is in some way connected with [her] union activity.” *Becker*,  
22 Item No. 1, at 14 (emphasis added).

23 Here, the evidence will show that Respondent did not violate NRS 288.270(1)(d) when it released  
24 Ms. Queen from probation. First, Complainant cannot make a *prima facie* showing that Ms. Queen’s  
25 union activity was the “real reason” for her release from probation. The “real reason” for her probationary  
26 release was well-documented by Ms. Watson – Ms. Queen lacked good clinical judgment that resulted  
27 in three separate incidents that had a direct impact on patient care. Even if Complainant can establish  
28 that Ms. Queen’s union activity was a motivating factor, the evidence will show that based on

1 **Ms. Queen’s serious lack of good** clinical judgment, Respondent would have released Ms. Queen from  
2 probation regardless of her union activity. Furthermore, no serious argument can be made that  
3 **Respondent’s stated reason was pretextual.**

- 4 1. Complainant cannot make a prima facie showing that protected activity was a motivating  
5 factor in the decision to release Ms. Queen from probation.

6 This case is analogous to this **Board’s very first decision in Becker**, Item No. 1. In that case,  
7 complainant Reginald Becker was an electrician employed by Washoe Medical Center. *Id.* at 1. Within  
8 a year after Mr. Becker began working, the complainant union began efforts to unionize the maintenance  
9 workers at Washoe Medical Center. *Id.* at 4. Mr. Becker took an active part in the unionization efforts,  
10 including preparing and distributing leaflets and membership cards, and talking with employees to urge  
11 them to join the union. *Id.* Around the same time, Mr. **Becker’s supervisor began** discussing issues with  
12 **Mr. Becker’s job performance, including performing** unnecessary work without consulting his  
13 supervisor, not keeping his supervisor informed, and complaints regarding his attitude and conduct. *Id.*  
14 Approximately one month later, Mr. Becker received his annual Job Evaluation Report, which rated  
15 **Mr. Becker “below average” in** nine different subject areas. *Id.* at 5. Mr. Becker was the only employee  
16 in the Maintenance Department who received a **“below average” rating on any subject.** *Id.* After the  
17 Maintenance Department was unionized, Mr. Becker continued to be actively involved in the effort to  
18 unionize all other departments of Washoe Medical Center. *Id.* at 6. Less than one month after the  
19 Maintenance Department was unionized, Mr. Becker was terminated, which Mr. Becker alleged was  
20 discrimination based on his union activity. *Id.* at 7.

21 The employer stated ten separate reasons for the termination:

- 22 1. Mr. Becker was dissatisfied with his job and his pay.  
23 2. He did not follow instructions.  
24 3. **He refused to stay in “chain of command” and went** over the head of his immediate supervisor.  
25 4. **He violated the hospital’s rule** against soliciting on the premises during working hours, by  
26 soliciting membership in the Union.  
27 5. The quantity of his work was below standard probably because he spent so much time visiting  
28 with other people.

- 1 6. He was unable to fit into the working environment and procedures of a hospital.
- 2 7. He did not get along well with some other employees such as the superintendent of the surgical
- 3 ward who refused to allow him in her department unless the Director of Plant Services came with
- 4 him.
- 5 8. He was the only employee in the Maintenance Department who received one below average mark
- 6 on the Annual Job Evaluation Report. Mr. Becker had nine below average marks.
- 7 9. He downgraded and condemned the management to an outside salesman.
- 8 10. He made threats against the Director of Plant Services and made very disparaging remarks
- 9 showing contempt for the Personnel Director.

10 *Id.* at 10-11.

11 Mr. Becker denied the above statements, but they were corroborated by several witnesses. *Id.* at

12 **11. In analyzing Mr. Becker’s claim of discriminatory discharge**, this Board reviewed several NLRB-

13 related precedents, and stated that “[e]ven in a case where the employee has extensively engaged in union

14 activity to the displeasure of the employer and is discharged, the employee has no right to be reinstated

15 if the employer can show the discharge was for any **other reason than union membership or activity.**” *Id.*

16 at 13 (citing *N.L.R.B. v. Tex-O-Kan Flour Mills, Co.*, 122 F.2d 433, 439 (5th Cir. 1941)). Notably, this

17 Board acknowledged that one of the bases for termination was related to union activity, *i.e.*, soliciting

18 union membership during work hours. *Id.* at 14. Nonetheless, this Board **held that violating the hospital’s**

19 **“no solicitation” rule by soliciting membership during work hours could be a valid reason for discharge**

20 **and stated that “[t]he fact that an employee cannot be discharged for labor union activity does not give**

21 **him a protective shield against being discharged for any other reason even if it is in some way connected**

22 **with his union activity.”** *Id.* at 14 (emphasis added). Accordingly, this Board concluded that Mr. Becker

23 failed to establish that his discharge was discrimination based on union activity, and the employer

24 established that Mr. Becker was discharged **for reasons other than his union activity.**” *Id.* at 16.

25 The overarching principle in *Becker* is that even if there is evidence that the basis for discharging

26 an employee has some connection to union activity, such evidence does not establish a *per se* violation

27 of NRS 288.270(1)(d). This Board continued to follow its reasoning in *Becker* in subsequent cases, and

28 generally found unlawful discrimination where the sole basis for discipline **was the employee’s union**

1 activity. *See Ehlers*, Item No. 18 (reprimand unlawful where sole **basis was employee’s statements made**  
2 in union capacity); *DuClercque*, Item No. 66 (same); *Jones*, Item No. 94 (same). Therefore, despite the  
3 **reference in Ms. Watson’s memorandum regarding staff** complaints that Ms. Queen was pressuring them  
4 to sign a staffing petition, that alone does not establish a violation of NRS 288.270(1)(d). Without more,  
5 Complainant cannot make a *prima facie* showing that union activity was a motivating factor in  
6 **Ms. Queen’s probationary release.**

7 2. Respondent would have released Ms. Queen from probation regardless of her protected  
8 activity, and Respondent’s stated reasons were not pretextual.

9 Assuming Complainant can make a *prima facie* showing, the evidence will nonetheless show that  
10 Ms. Queen would have been released from probation regardless of her union activity. Complainant cannot  
11 seriously dispute that poor clinical judgment and poor patient outcomes are independent grounds to  
12 release a registered nurse, particularly at a skilled nursing facility such as SNSVH. *See* NRS 449.0039(1)  
13 (skilled nursing facilities **provide “continuous skilled nursing and related care prescribed by a physician**  
14 **to a patient...whose primary need is the availability of such care on a continuous basis.”**). Thus,  
15 **Complainant’s only argument is that Respondent’s stated reasons were** pretextual, but that argument is  
16 without merit. The cases where this Board found unlawful discrimination, **despite the employer’s**  
17 proffered non-discriminatory reasons, involved egregious facts that are readily distinguishable from this  
18 matter.

19 In *Arredondo, et al. v. C.C.S.D, et al.*, Case No. A1-045337, Item No. 102-A (1981), complainant  
20 Valdemar Arredondo was a high school math teacher with 20 years of experience and was a vocal  
21 advocate for teacher rights. He was a longstanding member of the complainant union and had served as  
22 Building Senator, Building Grievance Representative, negotiating team member, treasurer, and executive  
23 board member, among other positions. *Id.* at 2. As Building Grievance Representative, he assisted fellow  
24 teachers with the preparation and processing of grievances and was requested by other teachers to attend  
25 meetings called by school administrators. *Id.* On one occasion, Mr. Arredondo was requested by two  
26 teachers to attend a meeting as their witness, but the administrator in charge advised that the meeting  
27 would be canceled if Mr. Arredondo did not leave, which eventually resulted in two other administrators  
28 physically evicting Mr. Arredondo from the room. *Id.* Based on that incident, Mr. Arredondo received

1 a written admonition and notice of suspension for insubordination, and the incident was cited in an  
2 **appraisal report that was placed in Mr. Arredondo's personnel file.** *Id.* Around this time, Mr. Arredondo  
3 was also a co-plaintiff, along with the union and other teachers, in a lawsuit against the school district  
4 concerning teacher evaluations. *Id.* at 4. Approximately four months after receiving the above suspension,  
5 the school district notified Mr. Arredondo that he was being administratively transferred from Valley  
6 High School to Kenneth C. Guinn Junior High School. *Id.*

7 **This Board concluded that Mr. Arredondo's transfer** was discriminatory and rejected the school  
8 **district's proffered justification.** *Id.* at 5. The school district claimed that the transfer was the result of a  
9 managerial concern that Mr. Arredondo was a **"disruptive" force** at Valley High School, and that the  
10 transfer complied with internal school district regulations. *Id.* However, this Board found that that type  
11 of transfer was highly infrequent. *Id.* Moreover, a cited regulation limited involuntary transfers to  
12 situations where an employee needed to be transferred to alleviate overstaffing in the school, and there  
13 was no overstaffing problem at Valley High School. *Id.* at 6. Another cited regulation allowed for  
14 **transfers in situations that required "an immediate change in the best interests of the students,"** but this  
15 Board found that Mr. Arredondo was an effective teacher and that there was otherwise no immediate  
16 need for the transfer. *Id.* This Board further found that, despite a prior Northwest Accreditation Report  
17 Recommendation to transfer longstanding teachers, only Mr. Arredondo (the teachers rights advocate)  
18 was transferred. *Id.* Furthermore, **"perhaps not ironically," there was also an increased number of**  
19 **grievances preceding Mr. Arredondo's transfer, where he** was serving as grievance representative, and  
20 the Valley High School principal testified that transferring Mr. Arredondo **would "take care of my**  
21 **problem."** *Id.* Additionally, several math openings existed at several different schools, yet Mr. Arredondo  
22 **was transferred to Guinn Junior High School, "where** it was common knowledge that the principal was  
23 anything but a union **sympathizer."** *Id.* at 7. In ruling in favor of the complainants, this Board stated:

24 **The Board's ruling by no means gives carte blanche** protection to an Association  
25 member simply because he dons a union hat. However[,] Arredondo is simply not just  
26 an association member. He has demonstrated an extensive, active and involved role as  
27 a visible and vocal advocate of teachers rights. The District and its Administrators may  
28 not solve their problem by attempting to sweep him under the rug and by so doing put  
fellow teachers and Association members on notice that active Association  
participation will result in potentially grave consequences.



1 *Id.*

2 In *Teamsters, Chauffeurs, Warehousemen & Helpers, and Professional Clerical, Public and*  
3 *Miscellaneous Employees*, this Board similarly rejected the **employer's proffered** justification.  
4 Item No. 246. Mr. Larry Burg was an x-ray technician at Humboldt General Hospital. *Id.* at 1. Mr. Burg  
5 was reported to hospital administration for soliciting union membership during break time in the  
6 cafeteria. *Id.* at 6. Two days later, he received a written reprimand for that activity based on the hospital  
7 allegation that the employee he was talking to was not on a break. *Id.* One week later, the complainant  
8 union requested recognition from the hospital pursuant to NRS 288.160. *Id.* That same day, Mr. Burg  
9 was admonished for a second union soliciting incident, and was told that he could not have union  
10 representation at discipline meetings. *Id.* Soon after, Mr. Burg filed a complaint with this Board, and  
11 one week later, Mr. Burg received a one-day suspension for drawing the attention of two food service  
12 employees to an off-color cartoon posted in the cafeteria. *Id.* Notably, there was a prior incident where  
13 Mr. Burg entered the emergency room during a critical situation where his interruption could have  
14 **endangered a patient's life, and Mr. Burg** had also received a one-day suspension for that incident.  
15 *Id.* at 8. After the incident with the off-color cartoon, Mr. Burg brought a union representative to a  
16 discipline meeting, and the following day Mr. Burg **was terminated for "insubordination, violation of**  
17 **company rules and unprofessionalism."** *Id.* at 7.

18 This Board found that Mr. Burg made a *prima facie* showing that his union activity was a  
19 motivating factor in his termination. *Id.* This Board further rejected **the hospital's proffered reason for**  
20 **termination.** *Id.* This Board noted that despite the gross disparity **between Mr. Burg's emergency room**  
21 **interruption and the off-color cartoon incident,** Mr. Burg had received the same discipline for both  
22 incidents. *Id.* at 8. The only other arguable discipline Mr. Burg received was a memorandum calling for  
23 better communication with hospital staff. *Id.* at 9. In sum, this Board found that the hospital historically  
24 **tolerated Mr. Burg's behavior, and** the evidence showed that the hospital ramped up its discipline against  
25 Mr. Burg only after he engaged in protected activity. *Id.* Therefore, this Board concluded that the hospital  
26 **failed to establish a valid reason for Mr. Burg's termination,** and that **except for Mr. Burg's protected**  
27 **activity,** he would not have been discharged. *Id.* at 11.

1           The facts of this case stand in stark contrast to the egregious conduct in *Arredondo* and *Teamsters*,  
2 both of which involved clear evidence of anti-union sentiment. Unlike in *Arredondo*, Ms. Queen was not  
3 a 20-year employee with extensive union involvement and a history of holding various executive and  
4 representative positions within the union. Rather, Ms. Queen was a probationary employee with  
5 documented work performance issues that were in no way tolerated by Respondent. Additionally, there  
6 was no legitimate administrative reason for the action taken in *Arredondo*. In contrast, the evidence will  
7 show that Ms. Queen had a substantiated lack of good clinical judgment that was directly related to patient  
8 care. There will also be no evidence that Ms. Watson **simply wanted to “sweep [Ms. Queen] under the**  
9 **rug” to avoid dealing with** union grievances. In fact, Ms. Watson, herself, is a member of Complainant.  
10 Furthermore, unlike in *Teamsters*, there is no evidence that Respondent ramped up scrutiny of Ms. Queen  
11 following her union activity. Ms. Queen was reasonably under scrutiny throughout her tenure based on  
12 her probationary status. In sum, there is no evidence that the **reasons for Ms. Queen’s probationary**  
13 **release were merely pretextual. Therefore, Complainant cannot establish that Ms. Queen’s probationary**  
14 **release violated NRS 288.270(1)(d).**

## 15 **V. STATEMENT OF RELATED PROCEEDINGS**

16           1. *AFSCME, Local 4041 v. State of Nevada, et al.*, EMRB Case No. 2023-019, relates to  
17 **Respondent’s discussion with Ms. Queen regarding staff** complaints as discussed herein, which is alleged  
18 **to be an unlawful “interrogation.”** Based on the interconnected allegations of that matter and the instant  
19 matter, both parties agree that these matters should be consolidated.

20           2. Grievance #9753, filed by AFSCME Local 4041 on behalf of Charlene Queen, relates to the  
21 exact same allegations as the instant matter. The undersigned requested that Complainant voluntarily  
22 withdraw this grievance in light of the two EMRB matters directly related to the same allegations and the  
23 express language in the applicable CBA that such grievances are improper because a remedy is provided  
24 under the EMRA. Unfortunately, Complainant refused to do so. The EMRB is the proper venue to address  
25 these allegations, but this improper grievance implicates **this Board’s ability to render a final decision.**  
26 **Therefore, it is Respondent’s view that Case** Nos. 2023-019 and 2023-029 should not proceed to hearing  
27 until Grievance #9753 is withdrawn.  
28

1 **VI. WITNESSES**

2 1. **Fred Wagar**, Director of the Nevada Department of Veterans Services, is expected to testify  
3 regarding the reasons for Ms. **Queen's release** from probation.

4 2. **Corine Watson**, Director of Nursing Services, is expected to testify regarding the reasons for  
5 **Ms. Queen's release from probation.**

6 3. **Blanche Dieket**, Human Resources Officer, is expected to testify regarding the reasons for  
7 **Ms. Queen's release from probation.**

8 4. **Charlene Queen**, former Registered Nurse IV, is expected to testify regarding the facts and  
9 circumstances alleged in the Complaint.

10 5. **Nathan Miller**, Certified Nursing Assistant, is expected to testify that Ms. Queen was coercing  
11 him to sign a staffing petition.

12 6. **Carissa Deleeuw**, Contract Speech Therapist, is expected to testify that Ms. Queen was  
13 coercing her to sign a staffing petition.

14 7. **Felirose Bali**, Licensed Practical Nurse, is expected to testify that Ms. Queen was pressuring  
15 other employees to sign the staffing petition during work hours and while Ms. Queen was on duty.

16 8. **Kelly Morris**, Registered Nurse V, is expected to testify regarding Ms. Queen's lack of good  
17 clinical judgment.

18 9. **Kathy Steffen**, Registered Nurse V, is expected to testify regarding Ms. Queen's lack of good  
19 clinical judgment.

20 10. **Robert Sims**, Registered Nurse V, is expected to testify regarding Ms. Queen's lack of good  
21 clinical judgment.

22 11. **Steven Pavlow**, SNSVH Administrator, is expected to testify regarding the policies and  
23 protocols at SNSVH as they relate to the allegations in the Complaint.

24 Respondent reserves the right to call any witnesses identified by Complainant.

25 Respondent reserves the right to amend this list if additional witnesses are identified during the  
26 course of these proceedings.

27 Respondent reserves the right to call additional witnesses for purposes of impeachment.  
28

1 **VII. ESTIMATED TIME NEEDED FOR PRESENTATION OF POSITION**

2 Respondent estimates it will need approximately four-six hours to present its position.

3 **VIII. CONCLUSION**

4 The evidence will show that Respondent did not interfere with Ms. Queen's rights in violation of  
5 NRS 288.270(1)(a), nor did Respondent discriminate or discharge Ms. Queen in violation of  
6 NRS 288.270(1)(d). Respondent lawfully released Ms. Queen from probation due to a documented lack  
7 of good clinical judgment that resulted in poor patient outcomes. Therefore, this Board should find in  
8 favor of Respondent on all claims.

9 DATED this 16th day of November, 2023.

10 AARON D. FORD  
11 Attorney General

12 By: /s/ Gerald Tan  
13 GERALD L. TAN  
14 Senior Deputy Attorney General  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 16th day of November, 2023, I served a true and correct copy of the foregoing **STATE OF NEVADA, DEPARTMENT OF VETERANS SERVICES, SOUTHERN NEVADA STATE VETERANS HOME'S PREHEARING STATEMENT**, by electronic service to:

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/s/ Anela Kaheaku  
An employee of the Office of the Attorney General

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6 *Counsel for Complainant*

**FILED**  
**November 16, 2023**  
**State of Nevada**  
**E.M.R.B.**  
5:47 p.m.

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

15 AFSCME, LOCAL 4041,  
16  
17 Complainant,

CASE NO: 2023-029

18 vs.

19 STATE OF NEVADA, DEPARTMENT  
20 OF VETERANS SERVICES, SOUTHERN  
21 NEVADA STATE VETERANS HOME,

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

22 Respondent.

23  
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28  
Complainant AFSCME, Local 4041 ("AFSCME"), by and through its attorney of record, Nathan R. Ring of Stranch, Jennings & Garvey, PLLC, and pursuant to NAC 288.250, hereby submits the following Prehearing Statement in this action now pending before the Local Government Employee-Management Relations Board ("Board" or "EMRB"). AFSCME reserves the right to supplement or amend this Statement as new or additional information becomes available. The Nevada Government Employee Management Relations Board has jurisdiction over this matter under NRS 288.280 because the facts alleged herein demonstrate a prohibited practice by the Respondent under NRS 288.270 and NRS 288.620.

**I. STATEMENT OF THE ISSUE**

Whether State of Nevada, Department of Veterans Services, Southern Nevada State Veterans Home ("Respondent") violated NRS 288.270(1)(a), NRS 288.270(1)(d), and NRS 288.620 when Respondent, through its agents, terminated Charlene Queen ("Ms. Queen") for here participation in AFSCME's filing of a Prohibited Practice Complaint before the EMRB?

1 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Complainant, AFSCME, initiated this action against the Respondent because it terminated  
3 member Charlene Queen because she engaged in protected activity with her union before the EMRB.  
4 The Respondent’s termination of Ms. Queen was a prohibited practice because it terminated her for  
5 engaging with AFSCME in its filing of Case No: 2023-019. That Case and the Complaint therein related  
6 **to Respondent’s unlawful interrogation of Ms. Queen for her involvement in protected union activity.**  
7 **Respondent’s actions were a direct violation of NRS 288.270(1)(a), NRS 288.270(1)(d) and NRS**  
8 **288.620.**

9 **A. LEGAL AUTHORITY**

10 NRS 288.270(1)(a) makes it unlawful to [i]nterfere, restrain or coerce any employee in the  
11 **exercise of any right guaranteed” under the EMRA**, and NRS 288.270(1)(d) makes it unlawful to  
12 terminate an employee because of their union activities.

13 **B. FACTS**

14 *i. Respondent’s Interrogation of Ms. Queen for Circulating a Petition*

15 AFSCME is the certified bargaining representative of Unit E, Professional employees who provide  
16 health care, including without limitation, physical therapists and other employees in medical and other  
17 **professions related to health (“Unit E”), for the State** of Nevada. AFSCME has represented employees in  
18 Unit E since January 22, 2020. Ms. Queen was a Registered Nurse, Charge 4 who was employed with the  
19 Respondent. She is an active member of AFSCME, Local 4041, and engaged in lawful concerted activities  
20 for mutual aid and protection in her workplace that are known to her employer.

21 On July 18, 2023, during non-work time and in non-work areas, Ms. Queen spoke with several  
22 other employees about a circulated AFSCME petition seeking to initiate a meeting with the Respondent  
23 **regarding the employer’s lengthening employee shifts from eight hours to twelve hours per day.** On the  
24 **morning of July 19, 2023, Ms. Queen was summoned by her supervisor, Corine Watson (“Ms. Watson”),**  
25 **into the supervisor’s office for what Ms. Queen thought was a discussion about a work-related matter.** At  
26 this discussion on July 19, 2023, only Ms. Queen and Ms. Watson were present.

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

16 *ii. Case No. 2023-019 is filed by AFSCME*

17 Following the interrogation from her supervisor regarding her protected activity, Ms. Queen  
18 reported the interrogation to her union. Her union, AFSCME, then filed a complaint with the EMRB,  
19 which was docketed as Case No. 2023-019. That complaint was filed and served on July 25, 2023.

20 *iii. Respondent’s Termination of Ms. Queen’s Employment*

21 On July 31, 2023, the Respondent terminated Ms. Queen’s employment. She was terminated  
22 despite her final review on July 12, 2023 stating she met standards. The termination of Ms. Queen’s  
23 employment was also further demonstrated to be unnecessary because in an email, Ms. Watson  
24 recommended only that Ms. Queen be demoted back to a Charge Nurse from House Supervisor.  
25 However, in that same email, Ms. Watson noted **Ms. Queen “joined disruptive staff in pressuring others  
26 to sign a 12-hour staffing petition.”** This was a specific reference to **Ms. Queen’s protected activity  
27 under the EMRA and the exact behavior for which she was previously interrogated and the basis upon  
28**



1 which Case No. 2023-019 was filed. Only six days after Case No 2023-019 was filed, and despite a  
2 recent review stating she met standards, Ms. Queen was terminated from employment.

### 3 **III. ARGUMENT**

4 It is a prohibited practice for a government employer to willfully interfere with their employees  
5 protected activity. NRS 288.270(1)(a). **Under NRS 288.270(1)(a), “[t]he test is whether the employer**  
6 **engaged in conduct, which may reasonably be said, tends to interfere with the free exercise of employee**  
7 **rights under the [EMRA].”** *AFSCME, Local 4041 v. State of Nevada*, Case No. 2020-001, Item No. 861-  
8 B (2021); *American Freight Ways, Inc.*, 124 NLRB 146 (1959); and *Caterpillar Tractor Co.*, 242 NLRB  
9 523, 532 n. 30 (1979). **There are three elements to a claim of interference with a protected right: “(1)**  
10 **the employer’s action can be reasonably viewed** as tending to interfere with, coerce, or deter; (2) the  
11 exercise of protected activity [by NRS Chapter 288]; and (3) the employer fails to justify the action with  
12 **a substantial and legitimate business reason.”** *AFSCME, Local 4041 v. State of Nevada*, Case No. 2020-  
13 001, Item No. 861-B (2021) (citing *Billings and Brown v. Clark County*, Item No. 751 (2012); *Medeco*  
14 *Sec. Locks, Inc. v. NLRB*, 142 F.3d 733, 745 (4th Cir. 1988); *Reno Police Protective Ass’n v. City of*  
15 *Reno*, 102 Nev. 98, 101, 715 P.2d 1321, 1323 (1986)).

16 NRS 288.270(1)(d) further makes it unlawful to:

17 Discharge or otherwise discriminate against any employee because the employee has signed or  
18 filed an affidavit, petition or complaint or given any testimony under this chapter, or because has  
19 employee has formed, joined or chosen to be represented by and employee organization.

20 The aggrieved employee must make a prima facie showing to support the inference that the  
21 protected conduct was a motivating factor in **the employer’s decision to discipline or discharge** the  
22 employee. *See NLRB v. Transportation Management Corp.*, 462 U.S. 393, 400 (1983). **The employer’s**  
23 justification for termination cannot be merely pretextual. *NLRB v. United Sanitation Serv., Div. of*  
24 *Sanitas Serv. Corp.*, 737 F.2d 936, 939-40 (11th Cir. 1984). In *Reno Police Protective Ass’n v. City of*  
25 *Reno*, an employee was terminated despite receiving exemplary performance evaluations and the  
26 justification provided for the employee’s termination was a rule violation that was commonplace among  
27 other employees in the same position. *Reno Police Protective Ass’n v. City of Reno*, 102 Nev. 98, 101–  
28

1 02, 715 P.2d 1321, 1323 (1986). The Nevada Supreme Court found that the employer did not meet its  
2 burden and that their reason for termination was pretextual. *Id.*

3 Any objective analysis of the facts and circumstances in this matter will assuredly lead to the  
4 conclusion that Ms. Queen was terminated for engaging in the protected activity of assisting AFSCME  
5 with and being the subject of the filing of Case No. 2023-019 before the EMRB. The timeline itself is  
6 damning. Case No: 2023-019 was filed on July 25, 2023, and Ms. Queen was terminated on July 31,  
7 2023. The timeline alone raises serious questions alone that her protected activity was the motivating  
8 **factor for Ms. Queen’s termination** from employment, but there is more than simply the timeline. To  
9 date, Ms. Queen has still not received a negative performance review. In fact, in her final review, on  
10 **July 12, 2023, Ms. Queen’s** performance was found to meet standards. The only thing that happened  
11 between her July 12, 2023, meets standards performance review and her July 31, 2023, termination was  
12 her union’s filing of a complaint concerning interrogation of her before this body on July 25, 2023.  
13 Respondent did, however, specifically mention Ms. Queen’s protected activity in an email when it cited  
14 **that she “joined disruptive staff in pressuring others to sign a 12-hour staffing petition.”**

15 There was no legitimate business reason for the of termination Ms. Queen’s employment. To  
16 date, there has been no legitimate business reason provided whatsoever. At this juncture, due to her  
17 sterling record of evaluations, the email citing her protected activity, and the timeline of when she the  
18 first EMRB case concerning her was filed before this body and then her termination from employment,  
19 any justification now provided by Respondent is blatantly pretextual.

20 Complainant is entitled to a declaration from the EMRB that Respondents committed a prohibited  
21 practice and violated the EMRA by unlawfully terminating Ms. Queen for filing a complaint before the  
22 EMRB.

#### 23 **IV. STATEMENT OF RELATED PROCEEDINGS**

24 A previously filed EMRB Complaint by AFSCME, which is currently docketed with the  
25 EMRB as Case No. 2023-019, is directly related to this matter and the filing of that complaint was the  
26 basis for **Respondent’s** termination of Ms. Queen’s **employment**. Based on the allegations contained in  
27  
28

1 these two matters and the overlapping key facts of each, AFSCME believed the two cases should be  
2 combined for hearing.

3 **V. ESTIMATED TIME NEEDED FOR PRESENTATION OF CASE**

4 AFSCME believes it will need approximately four hours for presentation of its case in chief. It  
5 may also need time for a potential rebuttal case.

6 **VI. LIST OF WITNESSES**

7  
8 1. **Ms. Charlene Queen**, AFSCME member. Ms. Queen will testify to her discussions with co-  
9 workers concerning shift lengths and working conditions, circulation of the petition on shift lengths, and  
10 **the interrogation to which she was subjected by Respondent's representatives concerning her protected**  
11 **activity and the AFSCME petition addressing employee shifts and schedules.**

12 2. **Mr. Nathan Miller**, AFSCME member and coworker. Mr. Miller will testify to his discussions  
13 with other coworkers and Ms. Queen concerning shift lengths and working conditions and the circulation  
14 of the petition on shift lengths.

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

20  
21 4. **Blanca Aguilar**, AFSCME Labor Representative. Ms. Aguilar will testify, in a limited capacity  
22 **and not beyond Ms. Queen's and the union's confidentiality privileges, to her discussions with Ms. Queen**  
23 **regarding the shift lengths and working conditions, the circulation of the petition on shift lengths, and the**  
24 **interrogation to which Ms. Queen was subjected by Respondent's representatives concerning Ms. Queen's**  
25 **protected activity and the AFSCME petition addressing employee shifts and schedules.**  
26  
27  
28

1 5. **Corine Watson**, Director of Nursing Services, is expected to testify regarding Ms. **Queen's**  
2 termination and the interrogation of Ms. Queen.

3 6. Any witnesses presented or named by the Respondent.

4 7. Complainant reserves the right to amend its list of witnesses as new witnesses become known to  
5 it in this matter.

6 8. Complainant further reserves the right to add witnesses for purposes of impeachment.

7 **VII. CONCLUSION**

8 AFSCME requests that the EMRB declare the Respondent committed a prohibited practice and  
9 violated the EMRA by unlawfully terminating Ms. Queen for filing Case No: 2023-019 and that  
10 judgment be rendered in favor of AFSCME as follows:  
11

- 12 a. Respondent engaged in a prohibited labor practice under the EMRA.  
13 b. **Respondent's actions violated NRS 288.270(1)(a) and NRS 288.270(1)(d).**  
14 c. AFSCME recover its attorneys' fees and costs incurred herein.  
15

16 DATED: November 16, 2023

**STRANCH, JENNINGS & GARVEY, PLLC**

17 /s/Nathan R. Ring, Esq.  
18 NATHAN R. RING, ESQ.  
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20 3100 W. Charleston Blvd., #208  
21 Las Vegas, NV 89102  
22 LasVegas@StranchLaw.com  
23 *Attorneys for Complainant*  
24  
25  
26  
27  
28

1  
2 **CERTIFICATE OF FILING AND SERVICE**

3 I CERTIFY THAT on the 16<sup>th</sup> day of November, 2023, I filed the above and foregoing  
4 **COMPLAINANT'S PREHEARING STATEMENT** by emailing the document to  
5 emrb@business.nv.gov.  
6

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

10  
11 State of Nevada  
12 Office of the Attorney General  
13 Gerald L. Tan, Deputy Attorney General  
14 100 North Carson Street  
15 Carson City, NV 89701  
16 gtan@ag.nv.gov  
17

18 /s/ Nathan R. Ring  
19 An employee of Stranch, Jennings & Garvey, PLLC  
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