

**FILED**

**DEC 27 2016**

**STATE OF NEVADA  
E.M.R.B.**

**STATE OF NEVADA  
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD**

NEVADA STATE EDUCATION  
ASSOCIATION,

Complainant,

v.

SILVER STATE CHARTER SCHOOLS,

Respondent.

Case No. 2016-012

**ORDER**

**ITEM NO. 819**

On December 12, 2016, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"); NAC Chapter 288 and NRS Chapter 233B.

On November 8, 2016, an Amended Notice of Oral Argument and Briefing Schedule was issued as the parties agreed, at the pre-hearing conference previously conducted on August 10, 2016, that there were no material facts in dispute and that the matter could be resolved upon the submittal of briefs, to be followed by oral argument if either party requested. Neither party requested oral argument.

The parties also submitted a Stipulation and Motion for Issues for Briefing and Argument. The Board approved said Stipulation and Motion at the properly noticed meeting pursuant to Nevada's open meeting laws and Administrative Procedures Act. As such, the Board confines its order to the following stipulated issues by the parties:

1. Did NSEA give timely notice to SSCS of its intent to negotiate pursuant to NRS 288.180(1)?
2. Does NRS 288.180(1) require a newly recognized bargaining agent for teachers or educational support personnel to provide notice of intent to bargain by January 1st?
3. Did SSCS bargain in good faith as required by NRS 288.280(1)(e)?

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1 Nevada State Education Association ("NSEA") is an employee organization recognized as the  
2 exclusive representative and bargaining agent of the teachers of Silver State Charter Schools ("SSCS").  
3 NSEA was recognized as the bargaining agent for the teachers of SSCS on December 17, 2015. On  
4 January 8, 2016, NSEA's Director submitted written notice to SSCS requesting that the two entities  
5 engage in collective bargaining discussions for the 2016 fiscal year. No collective bargaining  
6 negotiations have taken place between SSCS and NSEA since the recognition of NSEA as the  
7 bargaining agent for the teachers.

8 Senate Bill 241 ("SB 241") amended NRS 288.181 in 2015. Prior to said amendment, NRS  
9 288.180(1) stated as follows:

10 Whenever an employee organization desires to negotiate concerning any  
11 matter which is subject to negotiation pursuant to this chapter, it shall give  
12 written notice of that desire to the local government employer. Except as  
13 otherwise provided in this subsection, if the subject of negotiation requires  
the budgeting of money by the local government employer, the employee  
organization shall give notice on or before February 1.

14 Neither party disputes that the current amended version of NRS 288.180(1) applies. NRS  
15 288.180(1) currently states:

16 Whenever an employee organization desires to negotiate concerning any  
17 matter which is subject to negotiation pursuant to this chapter, it shall give  
18 written notice of that desire to the local government employer. Except as  
19 otherwise provided in this subsection, if the subject of negotiation requires  
20 the budgeting of money by the local government employer, the employee  
21 organization shall give notice on or before February 1. If an employee  
organization representing teachers of educational support personnel desires  
to negotiate concerning any matter which is subject to negotiation pursuant  
to this chapter, its shall give the notice required by this subsection on or  
before January 1.

22 Neither party disputes that NSEA represents teachers or educational support personnel.

23 Our Supreme Court stated in *Del Papa v. Bd. of Regents of the Univ. & Community College Sys. of*  
24 *Nevada*, 114 Nev. 388, 392, 956 P.2d 770, 774 (1998), that when "the language of a statute is plain and  
25 unambiguous, and its meaning is clear and unmistakable, there is no room for construction, and the courts  
26 are not permitted to search for its meaning beyond the statute itself." *See also Alsenz v. Clark Co. Sch.*  
27 *Dist.*, 109 Nev. 1062, 1065, 864 P.2d 285 (1993) ("This Court has long held that statutes should be given  
28

1 their plain meaning.”); *Building & Const. Trades Council v. State Public Works Bd.*, 108 Nev. 605, 610,  
2 836 P.2d 633 (1992) (“When a statute is susceptible to but one natural or honest construction, that alone is  
3 the construction that can be given.”); *Hartz v. Mitchell*, 107 Nev. 893, 897, 822 P.2d 667 (1991) (“When  
4 the language of a statute is plain and unambiguous, a court may not add to or extend its ordinary  
5 meaning.”). In further support of the “plain and unambiguous” doctrine, in *Worldcorp. v. State, Dept. of*  
6 *Taxation*, 113 Nev. 1032, 1035-36, 944 P.2d 824, 826 (1997), the court stated, “[I]t is well settled in  
7 Nevada that when statutory language is clear on its face, its intention must be deduced from such  
8 language.” Furthermore, in *State Indus. Ins. Sys. v. Bokelman*, 113 Nev. 1116, 1122, 946 P.2d 179, 183  
9 (1997), the court added, “[W]hen the language of a statute is plain and unambiguous, such that the  
10 legislative intent is clear, a court should not ‘add to or alter the language to accomplish a purpose not on  
11 the face of the statute . . . .”

12 NRS 288.180(1) (**emphasis added**) states that “[i]f an employee organization representing  
13 teachers of educational support personnel desires to negotiate concerning **any matter** which is subject  
14 to negotiation pursuant to this chapter, its shall give the notice required by this subsection **on or before**  
15 **January 1.**” The Board finds that the statute is plain and unambiguous, and its meaning is clear and  
16 unmistakable. The amended statute clearly provides that if an employee organization representing  
17 teachers desires to negotiate concerning **any matter** then it must give written notice on or before  
18 January 1. *See also Nev. Comm’n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9–10, 866 P.2d 297, 302  
19 (1994) (stating that “[i]t is a well-settled principle of statutory construction that statutes using the word  
20 ‘may’ are generally directory and permissive in nature, while those that employ the term ‘shall’ are  
21 presumptively mandatory.”).

22 Here, it is undisputed that NSEA did not provide notice of its intent to negotiate until January 8,  
23 2016, after the deadline imposed by NRS 288.180(1) had passed. As such, SSCS is generally correct in its  
24 contention that it was under no obligation to engage in negotiation as NSEA’s notice was untimely. *See*  
25 *generally Mason Valley Firefighters Ass’n, IAFF, Local 4642 v. Mason Valley Fire Prot. Dist.*, EMRB  
26 Case No. 2015-015, Item No. 806 (2015); *Clark County Public Employees Ass’n, SEIU Local 1107 v.*  
27 *Housing Auth. Of the City of Las Vegas*, EMRB Case No. A1-045478, Item No. 270 (1991); *see also*  
28 *United Elec., Radio & Mach. Workers of Am. (UE) v. N.L.R.B.*, 986 F.2d 70, 76 (4th Cir. 1993).

1 However, NSEA argues that the January 1 deadline is inapplicable in the instant case due to the  
2 fact that NSEA was recently recognized. NSEA primarily relies on two prior board decisions and argues  
3 that those decisions support its argument. The Board disagrees.

4 On page 6 of NSEA's Opening Brief in this matter, it cites to the 1991 decision of the Board in the  
5 matter of *Clark County Public Employees Ass'n, SEIU Local 1107 v. Housing Auth. of the City of Las*  
6 *Vegas*, EMRB Case No. A1-045478, Item No. 270 (1991). In that matter, an issue before the Board was  
7 whether a notice of an intent to negotiate was timely due to the association's recognition occurring after  
8 the deadline to provide notice. The Board explained, in pertinent part:

9 Application of that part of NRS 288.180(1) requiring the employee  
10 organization to give notice of its desire to negotiate concerning subjects  
11 which will necessitate the budgeting of money on or before February 1, is  
12 somewhat different for employee organizations with existing labor  
13 agreements, as compared to newly certified and/or recognized employee  
14 organizations filing notice of their desire to negotiate an initial labor  
15 agreement, such as the instant case. In the former case, NRS 288.180(1)  
16 operates as a statutory bar to prevent the employee organization from  
17 reopening negotiations during mid-term. This is to enable the local  
18 government employer to actuate budgeting processes mandated by the  
19 statute to provide for any additional funding which may be required as a  
20 result of negotiations. To interpret this requirement as precluding an  
21 employee organization, newly certified and/or recognized **subsequent to**  
22 **February 1**, from requesting negotiations concerning matters requiring the  
23 budgeting of money, would render said certification and/or recognition  
24 essentially meaningless until the fiscal year which follows said certification  
25 and/or recognition. Such interpretation would be unreasonable and contrary  
26 to the purpose of NRS 288.180(1).

27 *Clark County Public Employees Ass'n*, EMRB Case No. A1-045478, at 16 (underline in original, **bold**  
28 added).

29 While this case dealt with the prior version of NRS 288.180(1), its analysis is applicable in the  
30 instant matter. In that case, *Clark County Public Employees Ass'n*, the Board held that the deadline did  
31 not apply as the newly certified and/or recognized association was recognized "subsequent to February 1"  
32 – the deadline for notice required for negotiation which requires the budgeting of money. Here, it is  
33 undisputed that that NSEA was recognized prior to the January 1 deadline, not subsequent thereto. As  
34 indicated above, the statute is plain and unambiguous on its face and requires an employee organization  
35 representing teachers to give notice on or before January 1 if it desires to negotiate "concerning any



1 matter". As it is undisputed that NSEA was recognized as the bargaining agent for the teachers of  
2 SSCS on December 17, 2015, prior to the January 1 deadline, that deadline applied to NSEA, and the  
3 Board's prior cases are in harmony with this determination, in addition to the plain language of the  
4 statute itself.

5 The Board's more recent decision of *Mason Valley Firefighters Ass'n, IAFF, Local 4642 v.*  
6 *Mason Valley Fire Prot. Dist.*, EMRB Case No. 2015-015, Item No. 806 (2015), also advanced by both  
7 parties, further supports this conclusion. As in the matter of *Clark County Public Employees Ass'n*, the  
8 association seeking to negotiate with the employer was certified after the February 1 deadline for  
9 negotiation requiring the budgeting of money. As such, these cases support the proposition that if an  
10 organization is recognized **after** the deadline required per the subject statute, that deadline could be  
11 inapplicable as "the Association had not been recognized and thus there was no basis to request  
12 negotiations." *Mason Valley Firefighters Ass'n*, EMRB Case No. 2015-015, at 2.

13 As such, not only do these prior cases not conflict with the Board's determination that the plain  
14 language of the statute applies in the instant matter, these cases support this determination as here  
15 NSEA had been recognized and thus there was a basis to request negotiations. *See id.*

16 Therefore, the Board finds that NSEA did not give timely notice to SSCS of its intent to  
17 negotiate pursuant to NRS 288.180(1). In regards to the second stipulated issue before the Board, the  
18 Board finds that NRS 288.180(1) does require a newly recognized bargaining unit for teachers or  
19 educational support personnel to provide notice of intent to bargain by January 1 if the unit was  
20 recognized prior to that date. Finally, the Board finds that SSCS was not required to bargain in good  
21 faith as the notice was untimely.

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1 **FINDINGS OF FACT**

2 1. NSEA is an employee organization recognized as the exclusive representative and  
3 bargaining agent of the teachers of SSCS.

4 2. NSEA was recognized as the bargaining agent for the teachers of SSCS on December 17,  
5 2015.

6 3. On January 8, 2016, NSEA's Director submitted written notice to SSCS requesting that  
7 the two entities engage in collective bargaining discussions for the 2016 fiscal year.

8 4. If any of the foregoing conclusions is more appropriately construed as a conclusion of  
9 law, it may be so construed.

10 **CONCLUSIONS OF LAW**

11 1. The Board is authorized to hear and determine complaints arising under the Local  
12 Government Employee-Management Relations Act.

13 2. The Board has exclusive jurisdiction over the parties and the subject matters of the  
14 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

15 3. NRS 288.180(1) is plain and unambiguous, and its meaning is clear and unmistakable,  
16 and provides that if an employee organization representing teachers desires to negotiate concerning any  
17 matter then it must give written notice on or before January 1.

18 4. NSEA did not give timely notice to SSCS of its intent to negotiate pursuant to NRS  
19 288.180(1).

20 5. NRS 288.180(1) does require a newly recognized bargaining unit for teachers or  
21 educational support personnel to provide notice of intent to bargain by January 1st if the unit was  
22 recognized prior to that date.

23 6. SSCS was not required to bargain in good faith as the notice was untimely.

24 7. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it  
25 may be so construed.

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DATED this 27th day of December 2016.

By: Philip E. Larson  
PHILIP LARSON, Chairman

By: Sandra Masters  
SANDRA MASTERS, Board Member

NEVADA STATE EDUCATION  
ASSOCIATION,  
  
Complainant,  
  
v.  
  
SILVER STATE CHARTER SCHOOLS,  
  
Respondent.

## NOTICE OF ENTRY OF ORDER

To: Respondent and their attorneys Jeffery C. Long, Esq. and Levangie Law Group, and F. Thomas Edwards, Esq. and Holley Driggs Walch Fine Wray Puzey Thompson.

DATED this 27th day of December 2016.

BY MARISU ROMUALDEZ ABELLAR  
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management  
3 Relations Board, and that on the 27th day of December 2016, I served a copy of the foregoing **ORDER**  
4 by mailing a copy thereof, postage prepaid to:

5 Frank Flaherty, Esq.  
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