

FILED

JAN 22 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

IN RE:

Case No. 2019-026

PETITION TO BE DESIGNATED AS THE
EXCLUSIVE REPRESENTATIVE OF A
BARGAINING UNIT PURSUANT TO
SENATE BILL 135 OF THE 80TH SESSION OF
THE NEVADA LEGISLATURE

NOTICE OF ENTRY OF ORDER

ITEM NO. 854

TO: Peter Long, Interim Director of the Department of Administration, and Frank Richardson,
Interim Administrator of the Division of Human Resource Management, for the State of
Nevada;

TO: Harry Schiffman, President, American Federation of State, County and Municipal
Employees, Local 4041, and Fernando R. Colon, Associate General Counsel, AFSCME
Office of the General Counsel;

PLEASE TAKE NOTICE that the **ORDER REGARDING THE DESIGNATION OF
AN EXCLUSIVE REPRESENTATIVE FOR BARGAINING UNIT E** was entered in the
above-entitled matter on January 22, 2020.

A copy of said order is attached hereto.

DATED this 22nd day of January 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

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MARISU ROMUALDEZ ABELLAR
Executive Assistant

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BARGAINING UNIT PURSUANT TO
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OF THE NEVADA LEGISLATURE

CASE NO. 2019-026

**ORDER REGARDING THE
DESIGNATION OF AN EXCLUSIVE
REPRESENTATIVE FOR
BARGAINING UNIT E**

ITEM NO. 854

On January 14, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government Employee-Management Relations Act (the "Act"); NAC Chapter 288; and NRS Chapter 233B.

At issue was a petition filed on November 22, 2019, by the American Federation of State, County and Municipal Employees, Local 4041 ("AFSCME"), seeking to be designated as the exclusive representative for Bargaining Unit E, which consists of professional employees who provide health care. On December 4, 2019, staff issued its audit report on the petition and its supporting information. This audit report was presented to the Board at its January 14, 2020, meeting. The State of Nevada ("State") provided no response to the petition.¹

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¹ At the Board meeting of December 17, 2019, Peter Long, Interim Director of the Department of Administration, remarked that the State would not be responding to any of the petitions for recognition as it was the State's position that it is solely the purview of the Board to make such decisions.

1 **Standard for Designation of an Exclusive Representative**

2 NRS 288.520 provides a means for the Board to designate a labor organization as the
3 exclusive representative of a bargaining unit without an election. NRS 288.520 reads:

4 If no labor organization is designated as the exclusive representative of a
5 bargaining unit and a labor organization files with the Board a list of its
6 membership or other evidence showing that the labor organization has been
7 authorized to serve as a representative by more than 50 percent of the employees
8 within the bargaining unit, the Board shall designate the labor organization as the
9 exclusive representative of the bargaining unit without ordering an election.

10 Thus, the issue at hand is whether the petition and supporting information show that
11 AFSCME has been authorized to serve as a representative by more than 50 percent of the
12 employees within Bargaining Unit E. Based upon the wording of NRS 288.520, the burden of
13 proof is on the petitioner. To determine whether this burden has been met requires a two-step
14 process. The first step is to determine the size of the bargaining unit. The second step is then to
15 determine the percentage of support for the petitioner.

16 **Step 1: Determination of the Size of the Bargaining Unit**

17 As detailed in the audit report, staff obtained from the State a spreadsheet of all classified
18 employees who were employed by the State as of October 31, 2019.² Based on that report, the
19 bargaining unit had a total of 1,234 employees as detailed in Table 1.

20 **Table 1: Number of Employees in Unit E by Job Title**

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Title Code	Job Title	Count
10.126	Psychologist 3	0
10.132	Psychologist 2	28
10.143	Psychologist 1	0
10.170	Licensed Psychologist 1	39
10.171	Psychological Assistant	6

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27 ² The date of reports from the State will not always match the date petitions are received by the
28 EMRB as such reports from the State are produced at the end of each calendar month. The
EMRB attempts to use the reports that best match the date of the petition.

1	10.151	Clinical Social Worker 3	12
2	10.144	Clinical Social Worker 2	28
3	10.150	Clinical Social Worker 1	19
4	10.135	Mental Health Counselor 5	0
	10.137	Mental Health Counselor 4	0
5	10.138	Mental Health Counselor 3	10
	10.139	Mental Health Counselor 2	99
6	10.141	Mental Health Counselor 1	28
7	10.153	Psychological Dev. Counselor 2	4
8	10.152	Psychological Dev. Counselor 1	0
9	10.185	Psychiatric Caseworker 2	125
10	10.186	Psychiatric Caseworker 1	8
11	10.140	Developmental Specialist 3	272
	10.147	Developmental Specialist 2	24
12	10.149	Developmental Specialist 1	16
13	10.222	Registered Dietician 3	5
14	10.226	Registered Dietician 2	2
15	10.235	Registered Dietician 1	0
16	10.229	Mid-Level Medical Practitioner	7
	10.249	Compliance Specialist-Reg. Nurse	1
17	10.307	Psychiatric Nurse 2	215
18	10.309	Psychiatric Nurse 1	23
19	10.318	Correctional Nurse 2	79
20	10.319	Correctional Nurse 1	0
21	10.352	Registered Nurse 5	6
	10.354	Registered Nurse 4	17
22	10.355	Registered Nurse 3	0
	10.359	Registered Nurse 2	0
23	10.358	Nurse 1	6
24	10.375	Community Health Nurse 4	1
25	10.377	Community Health Nurse 2	7
26	10.378	Community Health Nurse 1	1
27	10.552	Health Facilities Inspector 2 – RN	16
	10.553	Health Facilities Inspector 1 – RN	0
28	10.614	Therapeutic Recreation Specialist 2	4

10.621	Therapeutic Recreation Specialist 1	11
10.615	Speech Pathologist 2	5
10.619	Speech Pathologist 1	0
10.616	Athletic & Recreation Specialist 1	7
12.333	Health Care Coord. 3 – Nurse	5
12.330	Health Care Coord. 3	2
12.334	Health Care Coord. 2 – Nurse	8
12.369	Health Care Coord. 2	39
12.335	Health Care Coord. 1 – Nurse	2
12.373	Health Care Coord. 1	4
12.393	Casework Management Specialist 4	3
12.394	Casework Management Specialist 3	5
12.395	Casework Management Specialist 2	10
12.396	Casework Management Specialist 1	7
12.469	Substance Abuse Counselor 2	11
12.470	Substance Abuse Counselor 1	7
Total		1,234 ³

Step 2: Determination of the Percentage of Support for the Petitioner

As detailed in the audit report, staff was able to determine that the petitioner has evidence of support of 644 employees, equaling 52.2%, which is detailed below.

First, it should be noted that the State, for many years, has allowed employees to have dues deducted from their paychecks and to have those deductions forwarded to the labor organization(s) of their choice. In this regard, staff found 322 instances in which AFSCME listed an employee on its membership list, which was provided as an exhibit to the petition, and the same employee was also listed on a dues list as provided by the State.

AFSCME also provided an authorization card list and authorization cards for those employees who indicated they authorize AFSCME to be their bargaining agent but who were not yet members of the organization. In this regard, staff found 281 instances in which AFSCME listed the employee on its authorization card list, which was provided as an exhibit to the

³ Note: Pursuant to Stipulation and Order D in EMRB Case 2019-017, and which was entered on September 18, 2019, the Social Worker 3, Social Worker 2 and Social Worker 1 classifications were moved from Unit E to Unit D and thus those job classifications do not appear in this report.

1 petition, and for which it also subsequently produced an authorization card with a signature and a
2 date that was within one year of the filing of the petition for recognition.⁴ The authorization card
3 is accepted by the Board as being a valid authorization card as it authorizes AFSCME to
4 represent an employee as the exclusive representative and to bargain on the employee's behalf.

5 The audit report showed that AFSCME had 51 employees on the membership list that did
6 not appear on the November 15, 2019, state dues list. The 51 employees were later reviewed
7 when the November 27, 2019, dues list arrived and 23 of them appeared on that dues list. As
8 stated in the audit report, staff believed that given more elapsed time many, if not all, of the
9 remaining 28 individuals would appear on subsequent dues lists. At that point AFSCME brought
10 in authorization cards for the 51 employees. Since 23 had already been accounted for on the
11 November 27, 2019, dues list, staff then reviewed the authorization cards for the remaining 28
12 employees. 24 of those individuals had valid authorization cards with dates near in time to the
13 filing of the petition and thus they were likely to appear on future dues lists. As further
14 mentioned in the audit report, this anomaly appeared to be a timing problem in that it appeared to
15 take a couple payroll cycles (or possibly more) for dues to be withheld from paychecks from the
16 time the form is forwarded to the State. Staff noted that if these individuals had originally been
17 shown to be on the authorization card list, instead of the membership list, then the 24 individuals
18 would have been counted in the group in the prior paragraph.

19 There were 14 instances in which an employee was on the dues list as provided by the
20 State but not on the AFSCME membership list provided as an exhibit to the petition. However,
21 the employees were on the AFSCME authorization card list, which also was provided as another
22 exhibit to the petition. AFSCME also produced for these 14 employees an authorization card
23 with a signature and a date that was within one year of the filing of the petition for recognition.

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25 ⁴ The general rule is that the individual authorization must be dated and must be current. National
26 Labor Relations Board, *An Outline of Law and Procedure in Representation Cases*; *A. Werman*
27 *& Sons*, 114 NLRB 629 (1956). It has been held that cards dated more than a year prior to the
28 filing of the petition were sufficiently current. *Carey Mfg. Co.*, 69 NLRB 224 fn. 4 (1946); *see*
also Northern Trust Co., 69 NLRB 652 fn. 4 (1946) (10 months); *Covenant Aviation Security,*
LLC, 349 NLRB 699 (2007), citing *Carey Mfg.* with approval.

1 Staff accordingly recommended that these employees be credited.

2 Finally, there were 3 instances in which an employee was on the AFSCME authorization
3 card list and for which it also produced an authorization card with a signature but for which there
4 was no date. On December 3rd AFSCME provided an affidavit explaining that the cards must
5 have been signed in 2019 as it did not begin collecting authorization cards until such time. This
6 affidavit was included as Appendix 2 to the audit report. The Board accepts the contents of the
7 affidavit as true. *Dart Container Corp.*, 294 NLRB 798 (1989); *see also Metal Sales Mfg.*, 310
8 NLRB 597 (1993); National Labor Relations Board, *An Outline of Law and Procedure in*
9 *Representation Case*.

10 The level of support is accordingly 644 employees (322+281+24+14+3).

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12 **Summary**

13 As detailed in Step 1 above, there are 1,234 employees in the bargaining unit. Thus, to
14 meet the requirement of NRS 288.520 there must be evidence supporting the petition of at least
15 618 employees, which is 50% plus one.

16 As further detailed in Step 2 above, there are 644 bargaining unit employees who either
17 are a member of AFSCME or who have signed an authorization card, all of whom have been
18 verified through the staff audit process. This would place the percentage at 52.2% (644 / 1234).

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1 **DESIGNATION ORDER**

2 Based on the foregoing,

3 IT IS HEREBY ORDERED that the Board designates AFSMCE as the exclusive
4 representative of Bargaining Unit E in that the petitioner has met its burden of proof to show it
5 has been authorized to serve as a representative by more than 50 percent of the employees within
6 Bargaining Unit E.

7 DATED this 22nd day of January 2020.

8 GOVERNMENT EMPLOYEE-
9 MANAGEMENT RELATIONS BOARD

10 By: 
11 BRENT ECKERSLEY, ESQ., Chair

12 By: 
13 SANDRA MASTERS, Vice-Chair

14 By: 
15 CAM WALKER, Board Member

16 By: 
17 GARY COTTINO, Board Member

18 By: 
19 BRETT HARRIS, ESQ., Board Member
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