

FILED

JAN 22 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

Case No. 2019-021

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. 855

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 F** 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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Peter Long
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Harry Schiffman
President
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Executive Assistant

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CASE NO. 2019-021

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

ITEM NO. 855

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 an amended petition filed on November 8, 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 F, which consists of non-professional employees who provide health care or personal care. The original petition, filed on September 20, 2019, was withdrawn when a preliminary analysis of an original audit showed it likely that the percentage of support would be below 50%. On November 22, 2019, staff issued its audit report on the amended petition and its supporting information. This audit report was presented to the Board at its December 17, 2019 meeting. The State of Nevada ("State") provided no response to the petition.¹

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 F. 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 It also obtained a similar
19 list for those classified employees who were employed by the Nevada System of Higher
20 Education ("NSHE"). Based on the two reports, the bargaining unit had a total of 748 employees
21 as detailed in Table 1. 579 of those employees were employed by the State proper while 169 of
22 the employees were employed by NSHE.

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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.

Table 1: Number of Employees in Unit F By Job Title

<u>Title Code</u>	<u>Job Title</u>	<u>State Count</u>	<u>NSHE Count</u>
3.520	Family Support Worker 3	10	6
3.521	Family Support Worker 2	0	0
3.524	Family Support Worker 1	0	0
5.174	Child Care Worker 2	0	60
5.175	Child Care Worker 1	3	18
10.262	Dental Assistant 3	0	25
10.263	Dental Assistant 2	8	46
10.264	Dental Assistant 1	0	13
10.360	Licensed Practical Nurse 2	63	0
10.365	Licensed Practical Nurse 1	0	0
10.363	Licensed Practical Nurse Trainee	1	0
10.368	Certified Nursing Assistant 3	7	0
10.369	Certified Nursing Assistant 2	81	0
10.371	Certified Nursing Assistant 1	1	0
10.370	Nursing Assistant Trainee	0	0
10.338	Mental Health Technician 4	14	0
10.346	Mental Health Technician 3	94	0
10.356	Mental Health Technician 2	29	0
10.366	Mental Health Technician 1	65	0
10.339	Developmental Support Tech 4	10	0
10.347	Developmental Support Tech 3	36	0
10.357	Developmental Support Tech 2	10	0
10.367	Developmental Support Tech 1	34	0
10.673	Activities Therapy Tech 2	8	0
10.683	Activities Therapy Tech 1	2	0
10.723	Pharmacy Technician 2	16	1
10.728	Pharmacy Technician 1	0	0
12.537	Group Supervisor 3	26	0
12.538	Group Supervisor 2	50	0
12.541	Group Supervisor 1	11	0
Total		579	169

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

2 As detailed in the audit report and the addendum to the audit report, staff was able to
3 determine that the petitioner has evidence of support of 377 employees, equaling 50.4%, which
4 is detailed below.

5 First, it should be noted that the State, for many years, has allowed employees to have
6 dues deducted from their paychecks and to have those deductions forwarded to the labor
7 organization(s) of their choice. In this regard, staff found 257 instances in which AFSCME listed
8 an employee on its membership list, which was provided as an exhibit to the petition, and the
9 same employee was also listed on a dues list as provided by the State.

10 NSHE also has allowed its employees to have dues deducted from their paychecks and to
11 have those deductions forwarded to the labor organization(s) of their choice. In this regard, staff
12 found 4 instances in which AFSCME listed an employee on its membership list, which was
13 provided as an exhibit to the petition, and the same employee was also listed on a dues list as
14 provided by NSHE.

15 AFSCME also provided an authorization card list and authorization cards for those
16 employees who indicated they authorize AFSCME to be their bargaining agent but who were not
17 yet members of the organization. In this regard, staff found 105 instances (79 for the State proper
18 and 26 for NSHE) in which AFSCME listed the employee on its authorization card list, which
19 was provided as an exhibit to the petition, and for which it also subsequently produced an
20 authorization card with a signature and a date that was within one year of the filing of the
21 petition for recognition.³ The authorization card is accepted by the Board as being a valid
22 authorization card as it authorizes AFSCME to represent an employee as the exclusive
23 representative and to bargain on the employee's behalf.

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25 ³ 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 Next, there was one instance in which an NSHE employee was on the AFSCME
2 authorization card list and for which it also produced an authorization card with a signature but
3 for which there was no date. Pursuant to the original petition, AFSCME on October 28th
4 provided an affidavit explaining that all authorization cards must have been signed in 2019 as it
5 did not begin collecting authorization cards until such time. This affidavit was included as
6 Appendix 2 to the audit report. The Board accepts the contents of the affidavit as true. *Dart*
7 *Container Corp.*, 294 NLRB 798 (1989); *see also Metal Sales Mfg.*, 310 NLRB 597 (1993);
8 National Labor Relations Board, *An Outline of Law and Procedure in Representation Case*.

9 Special Case of the Hourly Child Care Workers

10 Finally, the audit report noted that 30 of the Child Care Workers employed by NSHE
11 were designated with a (H), designating that they were hourly employees. No other employees,
12 either for the State proper or for NSHE, had such a designation. None of the 30 employees were
13 members of AFSCME nor had any of them signed authorization cards. The issue raised in the
14 audit report was whether hourly employees were to be part of the bargaining unit. In this regard,
15 NRS 288.425 details the types of employees who are either to be included or excluded from a
16 bargaining unit. NRS 288.425(2)(d) excludes temporary employees who are employed for a
17 fixed period of four months or less. However, nowhere in NRS 288.425, nor anywhere else in
18 the Executive Department section of NRS 288, are hourly employees mentioned.

19 This issue was further raised by the Board at its meeting held December 17, 2019. At
20 that time AFSCME representative Ashley Jenkins stated that AFSCME was not aware that the
21 hourly childcare workers were part of the bargaining unit in that they work for NSHE and that
22 AFSCME had been unable to get updated employee lists from NSHE for months. She further
23 stated that it was not until the audit report was issued by EMRB staff that she learned about this
24 issue. She stated she since inquired about the hourly childcare workers and that they are a
25 mixture of students and long-time employees. She also stated that 10 of the employees have
26 since signed authorization cards with AFSCME. She also stated she believed they should be part
27 of the bargaining unit as hourly employees are not specifically excluded from Senate Bill 135.
28 AFSCME Associate General Counsel Fernando Colon stated that due to a lack of an updated list

1 from NSHE the cards should be accepted.

2 Chair Eckersley then opined that perhaps the Board should allow a supplemental filing
3 due to the circumstances as presented and since no other petition has been filed for this unit and
4 thus no other entity would be harmed. The Board thereupon deliberated on the issues in the case,
5 and upon motion, gave AFSCME until January 13, 2020, to file proof of signing up the 10 hourly
6 childcare workers they previously mentioned.

7 On December 18, 2019 AFSCME Local 4041 filed an affidavit by Ashley Jenkins,
8 explaining why authorization cards had not previously been submitted. Attached to the affidavit
9 was a list of the 10 Child Care Workers which had signed authorization cards, followed by
10 copies of the cards. EMRB staff audited the names included with the affidavit and determined
11 that all 10 employees should be considered verified, which was included in an addendum to the
12 audit report, which was issued on December 18, 2019.

13 The level of support for AFSCME for this bargaining unit is accordingly 377 employees
14 (257+4+105+1+10).

15 **Summary**

16 As detailed in Step 1 above, there are 748 employees in the bargaining unit. Thus, to
17 meet the requirement of NRS 288.520 there must be evidence supporting the petition of at least
18 375 employees, which is 50% plus one.

19 As further detailed in Step 2 above, there are 377 bargaining unit employees who either
20 are a member of AFSCME or who have signed an authorization card, all of whom have been
21 verified through the staff audit process. This would place the percentage at 50.4% (377 / 748).

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