

FILED

JAN 27 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

PETITION FOR DESIGNATION AS THE
EXCLUSIVE REPRESENTATIVE OF A
BARGAINING UNIT PURSUANT TO
SENATE BILL 135 (2019)

and

IN RE:

THE ASSIGNMENT OF EXECUTIVE
DEPARTMENT JOB CLASSIFICATIONS
TO BARGAINING UNITS PURSUANT TO
SENATE BILL 135 OF THE 80TH SESSION
OF THE NEVADA LEGISLATURE¹

Consolidated Case No. 2019-023/024

NOTICE OF ENTRY OF ORDER

ITEM NO. 856

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: Thomas Donaldson, Esq. and Silvia Villanueva, Esq., of Dyer Lawrence, LLP, for the Nevada Highway Patrol Association; and

TO: Richard P. McCann, J.D., Nevada Association of Public Safety Officers, and Nicholas Wieczorek, Esq., Clark Hill, PLLC, for the Nevada State Law Enforcement Officers Association;

¹ The Board notes that this caption title repeats one used for EMRB Case 2019-017. However, the text of the document clearly shows that it is a petition seeking recognition for the labor organization to be the exclusive representative of Bargaining Unit G pursuant to Section 30 of Senate Bill 135 (NRS 288.520).

1 PLEASE TAKE NOTICE that the **ORDER REGARDING THE DESIGNATION OF**
2 **AN EXCLUSIVE REPRESENTATIVE FOR BARGAINING UNIT G** was entered in the
3 above-entitled matter on January 27, 2020. A copy of said order is attached hereto.

4 DATED this 27th day of January 2020.

5 GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7
8 BY



MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management
3 Relations Board, and that on the 27th day of January 2020, I served a copy of the foregoing
4 **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Peter Long
6 Interim Director of Administration
7 State of Nevada
8 515 East Musser Street, Third Floor
Carson City, Nevada 89701-4298

9 Frank Richardson
10 Interim Administrator of the Division of Human Resource Management
11 State of Nevada
12 Blasdel Building
209 East Musser Street, Suite 101
Carson City, Nevada 89701-4204

13 Thomas Donaldson, Esq.
14 Silvia Villanueva, Esq.
15 Dyer Lawrence, LLP
2805 Mountain Street
16 Carson City, Nevada 89701

17 Nevada Association of Public Safety Officers
(CWA Local 9110, AFL-CIO)
18 Richard P. McCann, J.D.
19 145 Panama Street
Henderson, Nevada 89015

20 Clark Hill, PLLC
21 Nicholas M. Wiczorek, Esq.
22 3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169

23
24
25 
26 **MARISU ROMUALDEZ ABELLAR**
27 Executive Assistant
28

FILED

JAN 27 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

PETITION FOR DESIGNATION AS THE
EXCLUSIVE REPRESENTATIVE OF A
BARGAINING UNIT PURSUANT TO
SENATE BILL 135 (2019)

and

IN RE:

THE ASSIGNMENT OF EXECUTIVE
DEPARTMENT JOB CLASSIFICATIONS
TO BARGAINING UNITS PURSUANT TO
SENATE BILL 135 OF THE 80TH SESSION
OF THE NEVADA LEGISLATURE²

Consolidated Case No. 2019-023/024

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

ITEM NO. 856

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 the First Amended Petition filed on October 30, 2019, by the Nevada Highway Patrol Association ("NHPA"), seeking to be designated as the exclusive representative for Bargaining Unit G without an election, which consists of Category I Peace Officers. The original petition, filed on October 17, 2019, was withdrawn when a preliminary analysis showed it likely that the percentage of support would be below 50%. On November 18, 2019, staff issued its audit report on the first amended petition and its supporting information. This audit report was

² The Board notes that this caption title repeats one used for EMRB Case 2019-017. However, the text of the document clearly shows that it is a petition seeking recognition for the labor organization to be the exclusive representative of Bargaining Unit G pursuant to Section 30 of Senate Bill 135 (NRS 288.520).

1 presented to the Board at its December 17, 2019 meeting. The State of Nevada ("State")
2 provided no response to the petition.³

3 Also at issue was the Petition filed on November 18, 2019, by the Nevada State Law
4 Enforcement Officers Association ("NSLEOA"), seeking to also be designated as the exclusive
5 representative for Bargaining Unit G. However, unlike the petition of NHPA, which sought
6 recognition without an election, the petition filed by NSLEOA sought recognition through an
7 election. On November 22, 2019, staff issued its audit report on the petition and its supporting
8 information. This audit report was also presented to the Board at its December 17, 2019 meeting.
9 As with the petition filed by NHPA, the State also provided no response to this petition.

10 At the December 17, 2019 meeting, the Board consolidated the two cases.

11 **Background Information**

12 On October 17, 2019 NHPA filed a Petition for Recognition for Unit G. The employees in this
13 bargaining unit are Category I Peace Officers. On October 30, 2019 NHPA filed a First Amended
14 Petition. Attached to the First Amended Petition were three exhibits. Exhibit 1 contains the names of
15 employees in Unit G who are members of NHPA. Exhibit 2 contains a chart developed by NHPA
16 purporting to show the number of members by job title. Exhibit 3 is a declaration by Matthew Kaplan,
17 who is the President of NHPA. Subsequent to the filing of the petition EMRB staff requested a copy of all
18 the authorization cards for employees listed on its membership list who do not appear on a dues list.
19

20 On November 18, 2019 NSLEOA filed its petition for recognition for Unit G, along with three
21 exhibits: (1) a spreadsheet showing its membership plus a list of non-members who signed authorization
22 cards; (2) copies of the authorization cards; and (3) a declaration by Kathleen Vonk, who is the President
23 of NSLEOA.
24

25 ///

26
27 ³ At the Board meeting of December 17, 2019, Peter Long, Interim Director of the Department of
28 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 NRS 288.525 also provides a means for the Board to call for an election when a labor
11 organization provides a membership list or other evidence showing that it is authorized to serve
12 as a representative by at least 30% but not more than 50% of the employees within a bargaining
13 unit.

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

20 If this analysis shows that NHPA does not meet the level of support pursuant to NRS
21 288.520, but does meet the level of support under NRS 288.525, then an analysis must be done
22 to determine whether NSLEOA also meets the level of support under NRS 288.525.

23 **Step 1: Determination of the Size of the Bargaining Unit Pursuant to the NHPA Petition**

24 In a series of telephone calls, it was confirmed that certain employees do not appear on
25 the State Master Roster as a number of Category I Peace Officers are deemed by state law to be
26 confidential and thus their names will not appear on such a report. This is similar to what was
27 also encountered when EMRB staff audited another petition. Because of this the number of
28 employees in the job titles listed in Table 1 below came from Peter Long, who at the time was

the Administrator of the Division of Human Resource Management in a telephone call between him and the EMRB Commissioner on October 23, 2019. The information for the NSHE count came from the Unit G NSHE Roster. It should be noted that the information in Table 1 below is almost identical to that presented by NHPA in its first amended petition. The number of employees is as follows:

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

Title Code	Job Title	State Count	NSHE Count
13.122	Game Warden 3	23	0
13.123	Game Warden 2	5	0
13.124	Game Warden 1	5	0
13.141	Park Ranger 3 – Commissioned	6	0
13.142	Park Ranger 2 – Commissioned	10	0
13.143	Park Ranger 1 – Commissioned	4	0
13.206	DPS Officer 2	594	0
13.207	DPS Officer 1	23	0
13.217	University Police Detective	0	4
13.222	University Police Officer 2	0	45
13.223	University Police Officer 1	0	15
13.234	Law Enforcement & Training Specialist	1	0
Total		671	64

Step 2: Determination of the Percentage of Support for NHPA

As detailed in the audit report and the addendum to the audit report, staff was able to determine that NHPA has evidence of support of 370 employees, equaling 50.3%, which is detailed below.⁴

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 250 instances in which NHPA listed an employee on its membership list, which was provided as an exhibit, and the same employee was also listed on a dues list as provided by the State. Those employees who were not confidential

⁴ The audit report stated the level of support was 372 employees. In preparing the order, all the numbers were recalculated and the actual number, as described below, is 370 employees. This reduction of 2 does not affect the conclusion that NHPA still represents more than 50% of the bargaining unit.

1 were also listed on the State Master Roster of classified employees.

2 There were also 42 instances in which NHPA listed the employee on its membership list and the
3 employee was also listed on the dues list as provided by the State. These employees were not on the State
4 Master Roster solely because they were confidential. This included all Game Wardens and Park Rangers.
5 Those DPS Officers who are confidential were confirmed in a series of e-mails with Peter Long of
6 DHRM.
7

8 Next, there were 46 instances in which NHPA listed the employee on its membership list but the
9 employee was not listed on the dues list as provided by the State. However, NHPA produced
10 authorization cards for these employees and these employees did appear on the State Master Roster.
11 Likewise, there were 32 instances in which NHPA listed the employee on its membership list and NHPA
12 produced authorization cards for these employees. These employees also appeared on the NSHE Master
13 Roster. All the authorization cards produced had a signature and a date that was within one year of the
14 filing of the petition for recognition.⁵
15

16 Special Case of Duplicate Memberships in Labor Organizations

17 While conducting the audit staff learned that NSLOEA, who later filed its own petition, also had
18 members within the bargaining unit for which the State and NSHE have been deducting dues. In fact,
19 there were a total of 27 employees having duplicate memberships, 14 for the State proper and 13 who
20 work for NSHE.
21

22 As was previously mentioned in the order issued for Unit I, there is nothing in the text of
23 Senate Bill 135 which prohibits dual memberships when no labor organization has yet been
24 named as the exclusive representative. Indeed, the plain and unambiguous text of NRS 288.520

25 ⁵ The general rule is that the individual authorization must be dated and must be current. National Labor
26 Relations Board, *An Outline of Law and Procedure in Representation Cases*; *A. Werman & Sons*, 114
27 NLRB 629 (1956). It has been held that cards dated more than a year prior to the filing of the petition
28 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 that a labor organization seeking to be designated as the exclusive representative of a bargaining
2 unit need only show evidence that it has been authorized to serve as “a” representative, not “the”
3 representative. This, when coupled with the practice that the State itself has supported allowing
4 employees to be members, and have dues deducted, from multiple unrecognized labor
5 organizations, should not be used against a labor organization seeking to be recognized.
6 Brooklyn Gas Co., 110 NLRB 18, 20 (1955) (“There is no reason why employees, if they so
7 desire, may not join more than one labor organization.”). *Pub. Employees’ Benefits Program v.*
8 *Las Vegas Metro. Police Dep’t*, 124 Nev. 138, 147, 179 P.3d 542, 548 (2008) (“it is well
9 established that, when interpreting a statute, the language of the statute should be given its plain
10 meaning unless doing so violates the act’s spirit.”); *State, Div. of Ins. v. State Farm Mut. Auto.*
11 *Ins. Co.*, 116 Nev. 290, 293–94, 995 P.2d 482, 485 (2000) (“Where the language of a statute is
12 plain and unambiguous, and its meaning clear and unmistakable, there is no room for
13 construction, and the courts are not permitted to search for its meaning beyond the statute
14 itself.”).

15 Thus the level of support for NHPA for this bargaining unit is accordingly 370 employees
16 (250+42+46+32).

20 **Summary for NHPA**

21 As detailed in Step 1 above, there are 735 employees in the bargaining unit. Thus, to
22 meet the requirement of NRS 288.520 there must be evidence supporting the petition of least 368
23 employees, which is 50% plus one.

24 As further detailed in Step 2 above, there are 370 bargaining unit employees who either
25 are a member of NHPA or who have signed an authorization card, all of whom have been
26 verified through the staff audit process. This would place the percentage at 50.3% (370 / 735).

27 **Analysis of the NSLEOA Petition**

28

1 On its face, the NSLEOA petition acknowledges that it does not meet the threshold under
2 NRS 288.520 to be recognized without an election. Rather, the petition itself claims that its level
3 of support exceeds the 30% threshold to call for an election under NRS 288.525. The subsequent
4 audit report concluded that the level of support was actually 29.3%. However, it is immaterial
5 whether the level of support was just over or just under the 30% threshold since NHPA's level of
6 support exceeds the 50% threshold under NRS 288.520. NRS 288.520 is clear in that should a
7 labor organization such as NHPA provide proof of support in excess of 50%, then the "Board
8 shall designate the labor organization as the exclusive representative of the bargaining unit
9 without ordering an election." NRS 288.520.

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 DESIGNATION ORDER

2 Based on the foregoing,

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

7 IT IS ALSO HEREBY ORDERED that the petition filed by NSLEOA be denied.

8 DATED this 27th day of January 2020.

9 GOVERNMENT EMPLOYEE-
10 MANAGEMENT RELATIONS BOARD

11 By: 
12 BRENT ECKERSLEY, ESQ., Chair

13 By: 
14 SANDRA MASTERS, Vice-Chair

15 By: 
16 CAM WALKER, Board Member

17 By: 
18 GARY COTTINO, Board Member

19 By: 
20 BRETT HARRIS, ESQ., Board Member
21
22
23
24
25
26
27
28