

FILED

JAN 22 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

Case No. 2019-025

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

NOTICE OF ENTRY OF ORDER

ITEM NO. 857

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

PLEASE TAKE NOTICE that the **ORDER REGARDING THE DESIGNATION OF AN EXCLUSIVE REPRESENTATIVE FOR BARGAINING UNIT H** 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

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 H pursuant to Section 30 of Senate Bill 135 (NRS 288.520).

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 22nd 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
9 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
13 209 East Musser Street, Suite 101
14 Carson City, Nevada 89701-4204

13 Nevada Association of Public Safety Officers
14 (CWA Local 9110, AFL-CIO)
15 Richard P. McCann, J.D.
16 145 Panama Street
17 Henderson, Nevada 89015

17 Clark Hill, PLLC
18 Nicholas M. Wieczorek, Esq.
19 3800 Howard Hughes Parkway, Suite 500
20 Las Vegas, Nevada 89169

21 
22 _____
23 MARISU ROMUALDEZ ABELLAR
24 Executive Assistant
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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

CASE NO. 2019-025

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

ITEM NO. 857

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 November 22, 2019, by the Nevada State Law Enforcement Officers Association (“NSLEOA”), seeking to be designated as the exclusive representative for Bargaining Unit H, which consists of Category II Peace Officers. The original petition, filed on November 17, 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 25, 2019, staff issued its audit report on the first 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.³

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 H pursuant to Section 30 of Senate Bill 135 (NRS 288.520).

³ At the Board meeting of December 17, 2019, Peter Long, Interim Director of the Department of

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 NSLEOA has been authorized to serve as a representative by more than 50 percent of the
12 employees within Bargaining Unit H. 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 In a series of telephone calls, it was confirmed that certain employees do not appear on
18 the State Master Roster as a number of Category II Peace Officers are deemed by state law to be
19 confidential and thus their names will not appear on such a report. This is similar to what was
20 also encountered when EMRB staff audited Unit G, Category I Peace Officers. Because of this
21 the number of employees in the job titles listed in Table 1 below came from Beverly Ghan,
22 Deputy Administrator of the Division of Human Resource Management in an e-mail received on
23 November 20, 2019.

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26
27 Administration, remarked that the State would not be responding to any of the petitions for
28 recognition as it was the State's position that it is solely the purview of the Board to make such
decisions.

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

Title Code	Job Title	State	Count
13.103	Agricultural Enforcement Officer 1		0
13.104	Agriculturist – Commissioned		0
13.111	Deputy Brand Inspector – Commissioned		0
13.237	AG Cybercrime Investigator 2		2
13.238	AG Cybercrime Investigator 1		0
13.243	Criminal Investigator 3		16
13.244	Criminal Investigator 2		0
13.245	Criminal Investigator 1		3
13.248	AG Criminal Investigator 2		29
13.249	AG Criminal Investigator 1		0
13.256	Compliance/Enforcement Inv. 3		5
13.257	Compliance/Enforcement Inv. 2		32
13.258	Compliance/Enforcement Inv. 1		1
13.265	Youth Parole Counselor 3		6
13.266	Youth Parole Counselor 2		10
13.267	Youth Parole Counselor 1		6
Total			110

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

As detailed in the audit report and the addendum to the audit report, staff was able to determine that the petitioner has evidence of support of 59 employees, equaling 53.6%, 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 25 instances in which NSLEOA 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 were also listed on the State Master Roster of classified employees, dated October 31, 2019.

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1 ///

2 NSLEOA also provided an authorization card list⁴ and authorization cards for those
3 employees who indicated they authorize NSLEOA to be their bargaining agent but who were not
4 yet members of the organization. In this regard, staff found 34 instances in which NSLEOA
5 listed the employee on its authorization card list, which was provided as an exhibit, and for
6 which it also subsequently produced an authorization card with a signature and a date that was
7 within one year of the filing of the petition for recognition.⁵ The authorization card is accepted
8 by the Board as being a valid authorization card as it authorizes NSLEOA to represent an
9 employee as the exclusive representative.

10 The level of support for NSLEOA for this bargaining unit is accordingly 59 employees
11 (25+34).

12
13 **Summary**

14 As detailed in Step 1 above, there are 110 employees in the bargaining unit. Thus, to
15 meet the requirement of NRS 288.520 there must be evidence supporting the petition of least 56
16 employees, which is 50% plus one.

17 As further detailed in Step 2 above, there are 59 bargaining unit employees who either are
18 a member of NSLEOA or who have signed an authorization card, all of whom have been verified
19 through the staff audit process. This would place the percentage at 53.6% (59 / 110).

20 ///

21 ///

22 ///

23 _____
24 ⁴ There actually was one list that combined the effects of a membership list and authorization
card list.

25 ⁵ The general rule is that the individual authorization must be dated and must be current.
26 National Labor Relations Board, *An Outline of Law and Procedure in Representation Cases; A.*
27 *Werman & Sons*, 114 NLRB 629 (1956). It has been held that cards dated more than a year prior
28 to the 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 ///

2 **DESIGNATION ORDER**

3 Based on the foregoing,

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

8 DATED this 22nd 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
18 By: 
19 GARY COTTINO, Board Member

20 By: 
21 BRETT HARRIS, ESQ., Board Member
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