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STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

Case No. 2020-006

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. 859

TO: Peter Long, Administrator of the Division of Human Resource Management, and Frank Richardson, Deputy Administrator of Labor Relations, 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 A** was entered in the above-entitled matter on March 9, 2020.

A copy of said order is attached hereto.

DATED this 9th day of March 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


CHRISTOPHER ROSKE
Administrative Assistant II

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CASE NO. 2020-006

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

ITEM NO. 859

On February 26, 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 February 10, 2020, by the American Federation of State, County and Municipal Employees, Local 4041 ("AFSCME"), seeking to be designated as the exclusive representative for Bargaining Unit A, which consists of labor, maintenance and institutional employees (i.e., blue collar employees). On February 13, 2020, staff issued its audit report on the petition and its supporting information. This audit report was presented to the Board at its February 24-25, 2020, 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 A. 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 and from the Nevada System
18 of Higher Education ("NSHE") spreadsheets of all classified employees who were employed by
19 the State or NSHE as of January 31, 2020.² Based on reports, the bargaining unit had a total of
20 1,551 employees as detailed in Table 1.

21
22 **Table 1: Number of Employees in Unit A By Job Title**

23

<u>Title Code</u>	<u>Job Title</u>	<u>State Count</u>	<u>NSHE Count</u>
1.608	Field Assistant 2 (PARC)	6	0
1.611	Field Assistant 1 (PARC)	0	0

24
25
26

27 ² The date of reports from the State and NSHE will not always match the date petitions are
28 received by the EMRB as such reports from the State and NSHE 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	2.126	Mail Service Technician	2	5
	2.129	Mail Service Clerk 2	10	6
2		Mail Service Clerk 1	6	0
3	3.207	Food Service Cook/SPVR 3	26	0
	3.203	Food Service Cook/SPVR 2	10	1
4	3.206	Food Service Cook/SPVR 1	1	1
5	3.213	Food Service Worker 2	0	6
6	3.218	Food Service Worker 1	0	3
7	3.403	Laundry Worker 2	2	0
8	3.406	Laundry Worker 1	1	0
9	3.504	Driver – Shuttle Bus 2	0	1
	3.505	Driver – Shuttle Bus 1	0	5
10	3.506	Driver – Van/Automobile	2	0
	3.535	Transportation & Safety Attendant 2	6	0
11	3.540	Transportation & Safety Attendant 1	0	0
12	7.848	Audiovisual Assistant 2	0	0
13	7.837	Audiovisual Assistant 1	0	1
	7.838	Audiovisual Assistant Trainee	0	0
14				
	9.117	Hwy Maintenance Worker 4	77	0
15	9.120	Hwy Maintenance Worker 3	189	0
	9.127	Hwy Maintenance Worker 2	66	0
16	9.130	Hwy Maintenance Worker 1	53	0
17	9.137	Hwy Construction Aid	49	0
18				
	9.203	Special Equipment Operator 2	2	0
19	9.202	Special Equipment Operator 1	0	0
20	9.205	Seasonal Forestry Equipment Operator	0	0
21	9.209	Grounds Equipment Operator 2	9	7
22	9.204	Grounds Equipment Operator 1	0	4
	9.211	Driver Warehouse Worker 2	4	0
23	9.210	Driver Warehouse Worker 1	7	0
	9.208	Driver Warehouse Worker TR	2	0
24				
	9.311	Hwy Equipment Mechanic Spec	1	0
25	9.318	Hwy Equipment Mechanic 2	20	0
26	9.321	Hwy Equipment Mechanic 1	49	0
	9.323	Equipment Mechanic 3	12	3
27	9.331	Equipment Mechanic 2	14	13
28	9.333	Equipment Mechanic 1	0	0

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9.326	Equipment Mechanic-In-TRNG 4	0	0
9.328	Equipment Mechanic-In-TRNG 3	0	0
9.330	Equipment Mechanic-In-TRNG 2	0	0
9.332	Equipment Mechanic-In-TRNG 1	1	0
9.335	Fleet Service Worker 3	14	0
9.336	Fleet Service Worker 2	1	0
9.337	Fleet Service Worker 1	3	0
9.327	Auto Body Worker	3	0
9.357	Aircraft Maintenance Specialist	3	0
9.407	Precision Machinist	1	0
9.408	HVACR Specialist 2	14	12
9.421	HVACR Specialist 1	6	34
9.425	Heat Plant Specialist 3	9	0
9.420	Heat Plant Specialist 2	3	0
9.428	Heat Plant Specialist 1	0	0
9.430	Welder 2	10	2
9.417	Welder 1	0	0
9.431	Locksmith 2	2	4
9.418	Locksmith 1	1	5
9.424	Carpenter 2	1	2
9.423	Carpenter 1	2	6
9.447	Electrician 2	9	10
9.426	Electrician 1	6	22
9.459	Painter 2	1	2
9.429	Painter 1	0	6
9.463	Plumber 3	0	3
9.462	Plumber 2	10	2
9.432	Plumber 1	3	18
9.465	Craft Worker-In-Training 4		
	A. Painter		
	B. Plumber		
	C. Welder		
	D. Air Conditioning/Refrigeration SPEC		2
	E. Heat Plant Specialist		
	F. Carpenter		
	G. Electrician		
	H. Locksmith		
9.466	Craft Worker-in-Training 3		

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		A. Painter			1
		B. Plumber			
		C. Welder			
		D. Air Conditioning/Refrigeration SPEC			
		E. Heat Plant Specialist			
		F. Carpenter			
		G. Electrician			
		H. Locksmith			
	9.467	Craft Worker-In-Training 2			
		A. Painter			
		B. Plumber			
		C. Welder			
		D. Air Conditioning/Refrigeration SPEC			1
		E. Heat Plant Specialist			
		F. Carpenter			
		G. Electrician			
		H. Locksmith			
	9.468	Craft Worker-In-Training 1			
		A. Painter			
		B. Plumber			
		C. Welder			
		D. Air Conditioning/Refrigeration SPEC			
		E. Heat Plant Specialist			
		F. Carpenter			
		G. Electrician			
		H. Locksmith			
	9.445	Maintenance Repair SPEC 2	14		15
	9.441	Maintenance Repair SPEC 1	43		28
	9.456	Railroad Restoration SPEC 2	1		0
	9.457	Railroad Restoration SPEC 1	1		0
	9.495	Wastewater Treatment Operator 3	0		0
	9.496	Wastewater Treatment Operator 2	1		0
	9.497	Wastewater Treatment Operator 1	0		0
	9.498	Water System Operator 2	5		0
		B. State Parks			
	9.478	Water System Operator 1	1		0
	9.499	Water System Worker	0		0
	9.500	Park Maintenance Specialist	16		0
	9.482	Maintenance Repair Aid 3	0		4
	9.483	Maintenance Repair Aid 2	0		1

1	9.484	Maintenance Repair Aid 1	0	5
2	9.485	Maintenance Repair Worker 4	3	3
3	9.486	Maintenance Repair Worker 3	11	16
4	9.487	Maintenance Repair Worker 2	10	8
5	9.488	Maintenance Repair Worker 1	0	1
6	9.490	Sign Fabricator	1	0
7	9.491	Temporary Aid 2	0	0
8	9.492	Temporary Aid 1	5	0
9	9.446	Art Preparator	0	3
10	9.534	Research Aid 2	0	6
11	9.555	Research Aid 1	0	1
12	9.530	Prison Dairy Supervisor	1	0
13	9.551	Prison Farm Supervisor	1	0
14	9.560	Prison Milker	0	0
15	9.561	Prison Milker Trainee	0	0
16	9.630	Grounds Maintenance Worker 5	4	0
17		A. Irrigation	0	7
18		B. Grounds Services	0	7
19	9.633	Grounds Maintenance Worker 4	4	4
20	9.635	Grounds Maintenance Worker 3	6	13
21	9.639	Grounds Maintenance Worker 2	5	19
22	9.641	Grounds Maintenance Worker 1	0	0
23	9.631	Custodial Worker 2	64	61
24	9.634	Custodial Worker 1	11	184
25	9.636	Custodial Worker Trainee	0	0
26	9.637	Facility Attendant	0	13
27	9.708	Duplicating Machine Operator 3	0	1
28	9.707	Duplicating Machine Operator 2	0	0
	9.709	Duplicating Machine Operator 1	0	0
	9.715	Offset Press Operator	0	2
	9.712	Offset Machine Operator 2	0	2
	9.713	Offset Machine Operator 1	0	0
	9.722	Camera Plate Processing Tech	0	0
	9.718	Microfilm/Imaging Laboratory Tech	1	0

9.725		Microfilm/Scanner Operator 3	0		0
9.719		Microfilm/Scanner Operator 2	11		0
9.720		Microfilm/Scanner Operator 1	4		0
9.739		Silk Screen Printer	1		0
9.741		Sign Writer	1		0
10.265		Dental Equipment Technician	0		1
10.261		Dental Prosthetics Technician	2		1
Totals			957		594

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 776 employees, equaling 50.03%, 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 171 instances in which AFSCME listed an employee on its State 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.

Likewise, NSHE has also allowed its 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 102 instances in which AFSCME listed an employee on its NSHE list, which was provided as an exhibit to the petition, and the same employee was also listed on a dues list as provided by NSHE.

In addition to its State list and NSHE list, AFSCME also provided 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 252 instances in which AFSCME listed the employee on its State list, which was provided as an exhibit to the petition, as well as 240 instances in which AFSCME listed the employee on its NSHE list, which also was provided as an exhibit to the petition, and both for which it also subsequently produced an

1 authorization card with a signature and a date that was signed either in 2019 or 2020.³ The
2 authorization card is accepted by the Board as being a valid authorization card as it authorizes
3 AFSCME to represent an employee as the exclusive representative and to bargain on the
4 employee's behalf.

5 Next, there were 2 instances in which an employee was on the State AFSCME list and for
6 which it also produced an authorization card with a signature but a date prior to 2019. Likewise,
7 there were 3 instances in which an employee was on the NSHE AFSCME list and for which it
8 also produced an authorization card with a signature but a date prior to 2019. On February 12,
9 2020 AFSCME provided an affidavit explaining that the cards must have been signed in 2019 as
10 it did not begin collecting authorization cards until such time. This affidavit was included as
11 Appendix 2 to the audit report. The Board accepts the contents of the affidavit as true. *Dart*
12 *Container Corp.*, 294 NLRB 798 (1989); *see also Metal Sales Mfg.*, 310 NLRB 597 (1993);
13 National Labor Relations Board, *An Outline of Law and Procedure in Representation Case*.⁴

14 Finally, there were 4 instances in which an employee was on the dues list as provided by
15 the State but not on the State list as provided by AFSCME. Likewise, there were 2 instances in
16 which an employee was on the dues list as provided by NSHE but not on the NSHE list as
17 provided by AFSCME. Pursuant to a telephone conversation on February 11, 2020, AFSCME
18 that same day produced copies of the membership cards for these employees. The Board finds
19 that these 6 employees should also be counted.⁵

20 The level of support is accordingly 776 employees (171+102+252+240+2+3+4+2).

21 On February 25, 2020, on the day the subject petition was set to be heard, International
22 Union of Operating Engineers, Locals 3, 12, 39, and 501, AFL-CIO (IUOE) filed a "Petition to

23 ³ The general rule is that the individual authorization must be dated and must be current. National
24 Labor Relations Board, *An Outline of Law and Procedure in Representation Cases*; *A. Werman*
25 *& Sons*, 114 NLRB 629 (1956). It has been held that cards dated more than a year prior to the
26 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.

27 ⁴ The process of allowing an affidavit was previously allowed by the Board for Units E and I.

28 ⁵ The process of allowing the filing of supplemental information was previously allowed by the
Board for Unit I.

1 Vacate Petition to be Designated as the Exclusive Representative for Bargaining Unit A.”
2 Preliminarily, the Board notes that there are no provisions which allow for the filing of the
3 above-referenced Petition to Vacate (nor did IUOE detail any authority for doing so within its
4 Petition).

5 IUOE attached 7 declarations which it purports lowers AFSCME’s support below the
6 required threshold. IUOE requested the Board to either “vacate” AFSCME’s Petition or, in the
7 alternative, continue its deliberations on AFSCME’s Petition, effectively delaying designation.
8 The Board reviewed the attached declarations and found that the Declarations of Mario
9 Gonzalez-Brito, John Jauer, and Barry Baker all purport to relay information they heard from
10 someone else, without personal knowledge of the actual events. The Board does not find these
11 credible. “Kmillion” and Charles Martin each provided letters (as opposed to declarations)
12 simply indicating arguments between IUOE and AFSCME representatives. The Board finds that
13 these do not lower the support for AFSCME as further detailed below. Finally, with regards to
14 the declarations of Jason Duesterbeck and Curtis Perry, the Board notes that the handwriting
15 (including the dates) do not match those of the actual signatures. As such, the Board does not
16 accept these as trustworthy – notably neither of these individuals gave public comment at the
17 meeting. The Board additionally notes that had these individuals given public comment, the
18 Board may have been inclined to order a hearing in this matter. Generally, a showing of interest
19 is not subject to attack on the ground that the cards on which it is based have been revoked or
20 withdrawn and, as further detailed below, IUOE did not properly file a request for an election.
21 *General Dynamics Corp.*, 175 NLRB 1035 (1969); *see also Allied Chemical Corp.*, 165 NLRB
22 235 fn. 2 (1967); *Vent Control, Inc.*, 126 NLRB 1134 (1960).

23 Furthermore, IUOE lacks standing as it did not file a request for election or otherwise
24 comply with any of the requirements of the statute. *See* NRS 288.520 *et seq.*; *see e.g.*, NRS
25 288.525(1) (“If no labor organization is designated as the exclusive representative of a
26 bargaining unit, the Board shall order an election to be conducted within the bargaining unit if: A
27 labor organization files with the Board a written request for an election which includes a list of
28 its membership or other evidence showing that it has been authorized to serve as a representative

1 by at least 30 percent but not more than 50 percent of the employees within the bargaining
2 unit.”). Indeed, IOUE is not without recourse in this matter as it can simply follow the plain and
3 unambiguous procedure laid out in the EMRA – for example, NRS 288.525(2) provides:

4 If the Board designates a labor organization as the exclusive representative of a
5 bargaining unit ... pursuant to NRS 288.520, the Board shall order an election:

6 (a) If either:

7 (1) Another labor organization files with the Board a written request for an
8 election which includes a list of its membership or other evidence showing that
9 the labor organization has been authorized to serve as a representative by at least
10 50 percent of the employees within the bargaining unit; or

11 (2) A group of employees within the bargaining unit files with the Board a
12 written request for an election which includes a list or other evidence showing
13 that more than 50 percent of the employees within the bargaining unit have
14 requested that an election be conducted to change or discontinue representation;

15 Finally, it is well established that the showing of interest is an administrative matter not
16 subject to litigation. *O. D. Jennings & Co.*, 68 NLRB 516 (1946); *River City Elevator Co.*, 339
17 NLRB 616 (2003); *General Dynamics Corp.*, 175 NLRB 1035 (1969); *Allied Chemical Corp.*,
18 165 NLRB 235 (1967); *NLRB v. J. I. Case Co.*, 201 F.2d 597 (9th Cir. 1953); *see also Dale’s*
19 *Super Valu*, 181 NLRB 698 (1970) (“The Board normally refuses to receive evidence in
20 representation cases that signatures on cards were unlawfully obtained or were otherwise invalid
21 or fraudulent. Such issues may be litigated, however, upon appropriate charges and a complaint
22 in an unfair labor practice proceeding.”); *see also Radio Corp. of America*, 89 NLRB 699 fn. 5
23 (1950); *White River Lumber Co.*, 88 NLRB 158 fn. 3 (1950); *Clarostat Mfg. Co.*, 88 NLRB 723
24 fn. 2 (1950).⁶

25 Summary

26 As detailed in Step 1 above, there are 1,551 employees in the bargaining unit. Thus, to
27 meet the requirement of NRS 288.520 there must be evidence supporting the petition of at least
28 776 employees, which is over 50%.

⁶ IOUE claims that it is “troubling” that several authorization cards were dated prior to the date SB 135 was enacted. However, it is reasonable for the process to begin in anticipation that SB 135 would be enacted. *See Covenant Aviation Security, LLC*, 349 NLRB 699 (2007) (The Board will accept a showing of interest gathered prior to the time a question concerning representation could be raised).

1 As further detailed in Step 2 above, there are 776 bargaining unit employees who either
2 are a member of AFSCME or who have signed an authorization card, all of whom have been
3 verified through the staff audit process. This would place the percentage at 50.03% (776 / 1551).

4 **DESIGNATION ORDER**

5 Based on the foregoing,

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

10 DATED this 9th day of March 2020.

11 GOVERNMENT EMPLOYEE-
12 MANAGEMENT RELATIONS BOARD

13 By: 
14 BRENT ECKERSLEY, ESQ., Chair

15 By: 
16 SANDRA MASTERS, Vice-Chair

17 By: 
18 CAM WALKER, Board Member

19 By: 
20 GARY COTTINO, Board Member

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