

FILED

MAY 13 2020

STATE OF NEVADA  
E.M.R.B.

STATE OF NEVADA  
GOVERNMENT EMPLOYEE-MANAGEMENT  
RELATIONS BOARD

AFSCME, LOCAL 4041,

Complainant,

v.

STATE OF NEVADA, DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, AGING  
AND DISABILITY SERVICES DIVISION,  
DESERT REGIONAL CENTER; DR. LISA  
THOMPSON-DYSON, RESIDENTIAL  
DIRECTOR,

Respondents.

Case No. 2020-001

**NOTICE OF ENTRY OF ORDER**

**ITEM NO. 861**

TO: Complainant and its attorney of record, Fernando Colon, Associate General Counsel, AFSCME  
Office of the General Counsel;

TO: Respondents and their attorneys of record, Roger L. Grandgenett II, Esq. and Neil C. Baker,  
Esq. and Littler Mendelson, P.C.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENTS' MOTION TO DISMISS**  
**COMPLAINT** was entered in the above-entitled matter on May 13, 2020.

A copy of said order is attached hereto.

DATED this 13 day of May 2020.

GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY

  
CHRISTOPHER ROSKE  
Administrative Assistant II

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 13 day of May 2020, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Fernando R. Colon  
Associate General Counsel  
AFSCME Office of the General Counsel  
1101 17<sup>th</sup> Street NW, Suite 900  
Washington, D.C. 20036

Neil Baker, Esq.  
Roger Grandgenett, Esq.  
Littler Mendelson P.C.  
3960 Howard Hughes Parkway, Suite 300  
Las Vegas, NV 89169-5937



CHRISTOPHER ROSKE  
Administrative Assistant II

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REGIONAL CENTER; DR. LISA THOMPSON-  
DYSON, RESIDENTIAL DIRECTOR,

Respondents.

Case No. 2020-001

**ORDER ON RESPONDENTS' MOTION  
TO DISMISS COMPLAINT**

EN BANC

**ITEM NO. 861**

On April 28, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of NRS Chapter 288, the Government Employee-Management Relations Act ("EMRA"); NAC Chapter 288 and NRS Chapter 233B.

At issue was Respondents' Motion to Dismiss the Complaint. Respondents argue that Complainant's requested relief lacks substantive merit and is also premature under SB 135. Specifically, Respondents argue that Complainant is not entitled to an order reinstating unpaid lunches because the Department's decision did not constitute a violation of the employees' collective bargaining rights or a failure to bargain in good faith. Further, Complainant was not designated at the time it filed its Complaint with the Board and as such failed to meet the requirements under SB 135 Sec. 53.5(1). Complainant argues that its complaint is related to the ability to be designated as the exclusive representative, and the Complaint plead sufficient facts to state a claim under the EMRA.

Section 53.5(1) of Senate Bill 135 (2019) provides:

Before November 1, 2020, a labor organization, as defined in section 12 of this act, that has not been designated an exclusive representative of a bargaining unit in accordance with sections 30, 31, and 32 of this act shall not file a complaint pursuant to section 27 of this act unless such complaint is related to the ability of the labor organization to be designated an exclusive representative.

1 SB 135 § 53.5(1). The Board agrees with Respondents that the Complaint is premature and as  
2 such grants the motion to dismiss in this respect. The Complaint is not related to the ability of the  
3 subject labor organization to be designated an exclusive representative. Indeed, Complainant concedes  
4 that it has since been designated as the exclusive representative. Complainant further confirms that it  
5 does not seek relief from Respondents' alleged interference with Complainant's ability to be  
6 designated. The Board notes that Complainant is not prohibited from filing a new complaint as it is  
7 now designated.

8 Next, regarding Respondents' remaining contentions, as this Board has repeatedly held, cases  
9 involving factual disputes, and credibility determinations, require a hearing and cannot be disposed of  
10 by a motion to dismiss. NAC 288.375 provides that the Board may dismiss a matter if the Board  
11 determines that no probable cause exists for the complaint or a complaint presents only issues that have  
12 been previously decided by the Board. An evidentiary hearing is required here in order to determine  
13 the issues presented including the proper submission and presentation of evidence as well as credibility  
14 determinations in accordance with NRS and NAC 288.

15 IT IS, THEREFORE, ORDERED that the Motion to Dismiss the Complaint is GRANTED with  
16 leave to amend.

17 Dated this 13 day of May 2020.

18 GOVERNMENT EMPLOYEE-  
19 MANAGEMENT RELATIONS BOARD

20 BY:   
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22 BRENT C. ECKERSLEY, Chair  
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