

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
CORRECTIONS, HIGH DESERT STATE PRISON;
BRIAN E. WILLIAMS, SR. WARDEN,

Respondents.

Case No. 2020-002

NOTICE OF ENTRY OF ORDER

ITEM NO. 862

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 RESPONDENT'S 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 17th 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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CORRECTIONS, HIGH DESERT STATE
PRISON; BRIAN E. WILLIAMS, SR. WARDEN,

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Case No. 2020-002

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

EN BANC

ITEM NO. 862

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 the Department's June 2019 announcement discontinuing the pilot program and its execution of that decision during the November 2019 shift bid did not constitute a refusal to bargain in good faith since these events occurred months before Complainant was certified. 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 pled sufficient facts to state a claim under the EMRA.

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

2 Before November 1, 2020, a labor organization, as defined in section 12 of this act, that
3 has not been designated an exclusive representative of a bargaining unit in accordance
4 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.

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

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

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

21 Dated this 13 day of May 2020.

22 GOVERNMENT EMPLOYEE-
23 MANAGEMENT RELATIONS BOARD

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25 BY: BRENT C. ECKERSLEY, Chair