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FILED
OCT 04 2022
STATE OF NEVADA
E.M.R.B.

8 STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
9 RELATIONS BOARD

10 IN RE: CATEGORY III PEACE OFFICERS
BARGAINING UNIT "I"

Case No.: 2022-014

12 REQUEST FOR ELECTION BY FRATERNAL
ORDER OF POLICE NEVADA C.O. LODGE 21
13 PURSUANT TO NRS 288.525(2)(a)(1)

REQUEST FOR ELECTION

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15
16 Fraternal Order of Police, Nevada C.O. Lodge 21 (hereafter "FOP Lodge 21"), which is a labor
17 organization within the meaning of NRS 288.048, by and through undersigned counsel Adam Levine,
18 Esq., of the Law Office of Daniel Marks requests pursuant to NRS 288.525(2)(a)(1) that the Board
19 Order an Election for Bargaining Unit "I", consisting of Category III Peace Officers in the following
20 positions:

21 Senior Correction Officer

22 Correction Officer

23 Correction Officer Trainee

24 Forensic Specialist I

1 Forensic Specialist II

2 Forensic Specialist III

3
4 employed by the State of Nevada, to determine whether FOP Lodge 21 should be recognized as the
5 exclusive bargaining representative for Unit "I".

6 NRS 288.525(2)(a) states:

7 If the Board designates a labor organization as the exclusive representative of a
8 bargaining unit following an election pursuant to subsection 1 or pursuant to NRS
288.520, the Board shall order an election:

9 (a) If either:


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

13 Filed herewith is the List of Membership for FOP Lodge 21 as of the date of this filing, as well
14 as the "Collective Bargaining Representative Authorization Forms", which together demonstrate that
15 FOP Lodge 21 has majority support in the bargaining unit.

16 Also submitted here with the is the Constitution and Bylaws of FOP Lodge 21, and through this
17 filing FOP Lodge 21 promises not to strike against the State of Nevada.

18 DATED this 3rd day of October, 2022.

19 LAW OFFICE OF DANIEL MARKS

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General Counsel for FOP Lodge 21

1 CERTIFICATE OF SERVICE

2

3 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and that on

4 the 4th day of October 2022, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a

5 sealed envelope with first class postage fully prepaid thereon, a true and correct copy of the above and

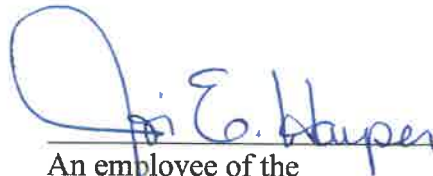
6 foregoing, to the addresses as follows:

7 Division of Human Resource Management
8 Attn: Administrator
9 Blasdel Building
209 East Musser Street, Suite 101
Carson City, Nevada 89701-4204

10 And

11 AFSCME Local 4041
12 Attn: Harry Schiffman, President
601 S. Rancho, Suite C 24
13 Las Vegas, NV 89106

14

15 

16 An employee of the
LAW OFFICE OF DANIEL MARKS

FILED
OCT 05 2022
STATE OF NEVADA
E.M.R.B.

EMRB CASE 2022-014

AUDIT REPORT OF THE REQUEST FOR ELECTION

Filed by

**FRATERNAL ORDER OF POLICE NEVADA C.O.
LODGE 21**

For

UNIT I – CATEGORY III PEACE OFFICERS

Background Information

On October 4, 2022, the Fraternal Order of Police Nevada C.O. Lodge 21 (“FOP”) filed a Request for Election pursuant to NRS 288.525(2)(a)(1). The purpose of the Request for Election is to seek to be recognized as the exclusive representative of State bargaining unit I. The employees in this bargaining unit are category III peace officers under NRS Chapter 289. In more specific terms, these are peace officers who work in a State correctional institution.

Unit I is currently represented by the American Federation of State, County and Municipal Employees, Local 4041 (“AFSCME”), which was recognized by the Board, without an election, as the exclusive representative of Unit I on January 22, 2020, after determining it had authorization from 52.8% of the employees in the bargaining unit.

Also submitted by FOP concurrent with the Request for Election were the following:

1. A list of employees in Unit I who are already members of FOP (“Membership List”);
2. A list of employees in Unit I who are not yet members of FOP but who have signed an authorization card (“Card List”);
3. A binder containing copies of the authorization cards for those employees on the Card List;
4. FOP’s Constitution and By-Laws; and
5. A Declaration of David Whittaker in Support of Request for Election, which states that the above four items are true and correct copies.

Separate from the above, the EMRB received a clean copy of the authorization card, a copy of which is included at the end of this report.

State Law

The relevant statute is NRS 288.525. Section 1 speaks to the situation in which a bargaining unit does not have a labor organization designated as an exclusive representative. Conversely, section 2

addresses the situation in which a bargaining unit already has a labor organization designated as an exclusive representative.

NRS 288.525 Requirements for designating labor organization as exclusive representative for bargaining unit following election.

1. If no labor organization is designated as the exclusive representative of a bargaining unit, the Board shall order an election to be conducted within the bargaining unit if:

(a) A labor organization files with the Board a written request for an election which includes a list of its membership or other evidence showing that it has been authorized to serve as a representative by at least 30 percent but not more than 50 percent of the employees within the bargaining unit; and

(b) No other election to choose, change or discontinue representation has been conducted within the bargaining unit during the immediately preceding 12 months.

2. If the Board designates a labor organization as the exclusive representative of a bargaining unit following an election pursuant to subsection 1 or pursuant to NRS 288.520, the Board shall order an election:

(a) If either:

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

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

(b) If applicable, the request filed pursuant to paragraph (a) is filed not more than 270 days and not less than 225 days before the date on which the current collective bargaining agreement in effect for the bargaining unit expires; and

(c) If no other election to choose, change or discontinue representation has been conducted within the bargaining unit during the immediately preceding 12 months.

Methodology

In addition to using the documents submitted by FOP, staff also obtained two additional documents. The first document was a spreadsheet of all classified employees currently employed by the State ("Master Roster"). This spreadsheet was dated as of October 1, 2022. The spreadsheet not only contains the names of classified employees but also contains, among other information, each employee's job title and code. The second document was a spreadsheet of all classified employees currently having dues to AFSCME withheld from their paychecks ("AFSCME Dues List"). This spreadsheet was dated as of October 3, 2022.

Staff extracted from the Master Roster all the employees who have a job title included for this bargaining unit, thus creating a new spreadsheet entitled "Unit I Roster." The specific job titles in Unit I are:

<u>Title Code</u>	<u>Job Title</u>
13.312	Sr. Correctional Officer
13.313	Correctional Officer
13.314	Correctional Officer Trainee
13.322	Forensic Specialist 3
13.323	Forensic Specialist 2
13.324	Forensic Specialist 1

Altogether the Unit I Roster consists of 1,270 employees. Please note that this is a significant reduction in the total number of employees in Unit I since AFSCME was recognized by the Board. At that time Unit I consisted of 1,769 employees.¹ This reduction in the total number of employees is consistent with the large vacancy rate experienced by the State overall and in particular the Department of Corrections.

Staff then added additional columns to the Unit I Roster spreadsheet as follows:

1. Member - Each name appearing on the Membership List, as submitted by FOP, received an "X" in this column if that name appeared on the Membership List.
2. Card – Each name appearing on the Card List, as submitted by FOP, received an "X" in this column if that name appeared on the Card List.
3. Comment – Each authorization card was reviewed for both a date within the prior 12 months as well as a signature on the card. A comment was placed in this column if there was an issue with a person's authorization card or if there was no authorization card.

Once the above information was entered into the Unit I Roster spreadsheet, the spreadsheet was then sorted in various ways to analyze the information.

¹ This included 85 Correctional Sergeants who no longer are in Unit I but instead are now in Unit J-Supervisors.

Limitations on the Audit

The audit only looked at the four corners of the authorization cards, the documents provided by FOP and the spreadsheets as provided by the State. The audit did not seek to verify the accuracy of any of the signatures on the authorization cards nor did the staff conduct any interviews of those signing authorization cards for the purpose of determining whether a given employee’s signature may have been unlawfully obtained.

Audit Results

The results of the audit are as follows:

Membership List

The Membership List, as submitted by FOP, has 227 names on the list. The audit shows that all 227 of these persons are included in the Unit I Roster. There are no exceptions.

Authorization Card List

The Card List, as submitted by FOP, has 484 names on the list. The audit shows that 39 of the entries should be considered invalid and credit should only be given for 445 persons on the list, all of whom are also included in the Unit I Roster. The 39 entries that should be excluded are due to the following reasons:

Names on the Card List but not on the Unit I Roster	9
Names on the Card List but who are also listed on the Membership List	4
2 have an authorization card	
2 do not have an authorization card	
Names on the Card List but the authorization card has no date	14
Names on the Card List but there is a date more than 12 months ago ²	2
Names on the Card List but which have no authorization card (not including the two mentioned above)	2
Names on the Card List which are listed two times (Note: Both name and the Employee ID are identical)	6
<u>Names on the Card List in which name is different but Employee ID is the same</u>	<u>2</u>
Total Excluded from Valid Count	39

² The Board has previously held in other cases that only authorization cards signed in the year prior to the submission of a petition should be considered.

Reconciliation: 484 names on Card List minus 39 excluded as invalid equals 445 valid names.

Summary

There are 672 valid names related to the petition. 227 of them are on the Membership List while 445 are on the Card List (484 – 39). This total of 672 (227+445) equals 52.9% of the 1,270 employees in the bargaining unit per the information received from the State and which is reflected in the Unit I Roster.

Analysis of the Request for Election and Conformance to State Law

NRS 288.525(2) lists three requirements for the Board to call for an election when there is a labor organization already designated as an exclusive representative for a bargaining unit.

First, a labor organization must file with the Board a request for an election and demonstrate through evidence that it is authorized to serve as a representative by at least 50 percent of the employees in the bargaining unit. As previously mentioned, staff believes that FOP has shown an authorization percentage of 52.9%.

Secondly, the request must be filed within a so-called “window period” which extends from 225 to 270 days before the expiration of the current collective bargaining agreement in effect for that bargaining unit. Per state law, all collective bargaining agreements involving a state bargaining unit expire on June 30th of each odd-numbered year. This would make the window period open on October 3rd of this year. As previously mentioned, FOP filed its request on October 4th.

Thirdly, no other such election must have occurred within the preceding 12 months for the bargaining unit in question, which is true in this case.

It is the province of the Board to make the final determination as to whether the above three conditions have been met but staff believes that the three conditions have been met.

Separate Analysis of AFSCME Membership

Apart from the above analysis, staff also undertook a comparison of current AFSCME membership for this bargaining unit and FOP membership and authorization card data. Though not legally required pursuant to NRS 288.525, the information below is presented in this report because the Board has previously ruled in other cases, including the very case involving the original designation of AFSCME as the exclusive representative for Unit I, as to whether an employee may be simultaneously a member of more than one labor organization (yes) and/or authorize more than one labor organization to represent him/her (yes).

The table below summarizes this information:

AFSCME members who are also FOP members	43
AFSCME members who are not FOP members but who have signed an FOP authorization card	134
AFSCME members who have signed an FOP authorization card but who did not provide a date on the card	5
AFSCME members who FOP listed on its Card List but no card was submitted in the binder of authorization cards	1
<u>AFSCME members not in the above numbers</u>	<u>169</u>
Total AFSCME membership for Unit I	352

