

FILED
June 22, 2025
State of Nevada
E.M.R.B.
12.11 a.m.

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STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

AFSCME, LOCAL 4041,

Complainant,

vs.

STATE OF NEVADA, DEPARTMENT OF VETERANS
SERVICES, SOUTHERN NEVADA STATE
VETERANS HOME,

Respondents.

Case No.: 2023-019 and 2023-029

**RESPONDENT STATE OF NEVADA,
DEPARTMENT OF VETERANS SERVICES,
SOUTHERN NEVADA STATE VETERANS
HOME'S MOTION FOR DEFERRAL TO
ARBITRATION AWARD AND MOTION TO
DISMISS**

Respondents, STATE OF NEVADA, DEPARTMENT OF VETERANS SERVICES, SOUTHERN
NEVADA STATE VETERANS HOME, by and through its counsel, Attorney General Aaron D. Ford, and Deputy
Attorney General Steven Sorensen; Complainant, hereby moves the Government Employee-Management Relations
Board ("EMRB" or the "Board") for an order dismissing the complaints in case number 2023-019 and 2023-029
("Complaints" or individually "First Complaint" when referencing the complaint in case number 2023-019 and
"Second Complaint" when referencing the complaint in case number 2023-029) by deferring to the findings of fact
as set forth in the May 14, 2025 Arbitration Award of Arbitrator Anthony Sciarrillo ("Award" attached as **Exhibit**
A) which addressed the claims in the Complaints and resolved the claims through the parties' grievance and
arbitration procedure contained within their collective bargaining agreement. ("CBA"). This Motion is based upon
NAC 288.375, the pleadings on file with the Board, the following Memorandum of Points and Authorities and any
arguments of the record herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 14, 2025, Arbitrator Anthony Sciarrillo issued his Award, **Exhibit A**, which denied the AFSCME, Local 4041's ("Complainants" or "AFSCME" or the "Union") contractual grievance against the State of Nevada ("the State"). The grievance alleged that the State violated the collective bargaining agreement by rejecting Charlene Queen ("Queen") from probation. Specifically, Complainants alleged that the rejection from probation "was not based on her job performance but was improperly and illegally influenced by her union activities." (**Exhibit B** Union's Formal Grievance page 3). Throughout the arbitration and throughout Complainant's post arbitration brief, it was further argued by Complainants' that the State engaged in interference with Queen's union activities (see Complainant's post-arbitration brief, **Exhibit C**, at 17:5 and 20:1-26:2). The Award rejected both of these claims stating "The Union has been unable to provide clear and convincing evidence of union interference" and "the Grievant was properly rejected from probationary employment by the State." (see Exhibit A, page 24) Because Complainants' allegations of prohibited labor practices in the above captioned cases are the same allegations and issues presented to the arbitrator and decided by the Award, the Board should defer to the Award and dismiss the Complaints.

II. FACTUAL ALLEGATIONS

Queen was hired by the State on August 15, 2022. (First Complaint, paragraph 10) Queen was placed on a 12-month probation upon being hired. (First Complaint, paragraph 11)

On July 12, 2023, Queen was given her final performance review where she “Did Not Meet Standards” in the category of Analyzing Situations and Materials. (See Exhibit A, page 10)

On July 19, 2023 Queen had a meeting with her supervisor Corine Watson (“Watson”) regarding allegations made by Queen’s coworkers that Queen had been harassing them about a petition. (see Exhibit A, page 22 and First Complaint paragraphs 11-16) No disciplinary action resulted from this meeting. (Exhibit A, page 22 “There was no action taken and no notification in the Grievant’s personnel file.”)

On July 25, 2023 the Union filed a prohibited practices complaint with the EMRB alleging that an interaction between Queen and her supervisor Watson was an illegal interrogation that amounted to interference of Queen's union activity. (See First Complaint)

1 After internal discussion, multiple incidents where patient safety was compromised, and concerns dating back to
2 June 20, 2023 regarding Queen's ability to meet the challenges of the position (see Exhibit A, page 23) the decision
3 was made to release Queen from probation on July 31, 2023. (Second Complaint, paragraph 27)

4 On August 22, 2023, Complainants filed a grievance alleging that Queen's rejection from probation was
5 retaliation for her union activity. (See Exhibit B)

6 On September 14, 2023 Complainants filed a prohibited practices complaint alleging that Queen was terminated
7 "because of her union activities and her exercise of rights protected under the EMRA". (Second Complaint,
8 paragraph 41)

9 A hearing before Arbitrator Anthony Sciarrillo took place on Complainants' grievance on December 16-17,
10 2024.

11 On May 15, 2025, Arbitrator Sciarrillo issued the Award denying the grievance and finding that "(t)he State
12 lawfully rejected the Grievant, Charlene Queen, from probationary employment." (Exhibit A, page 26) Although
13 extensively argued in Complainants' briefing that the interaction between Watson and Queen on July 19, 2023
14 amounted to interference (see Exhibit C, 20:1-26:2), Arbitrator Sciarrillo found that "(t)he Union has been unable to
15 provide clear and convincing evidence of union interference." (Exhibit A, page 25)

16 **III. ARGUMENT**

17 **A. Legal Standard for Deferral to Arbitration Award**

18 "The EMRB defers to a prior arbitration if: (1) the arbitration proceedings were fair and regular; (2) the
19 parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the EMRA; (4)
20 the contractual issue was factually parallel to the unfair labor practice issue(s); and (5) the arbitrator was presented
21 generally with the facts relevant to resolving the unfair labor practice(s)." (see *Ebarb v. Clark Cty & Clark Cty*
22 *Water Reclamation Dist.*, Case No 2018-006, Item 843, (2019) citing *Int'l Ass'n of Fire Fighters, Local 4068 v.*
23 *Town of Pahrump*, Case No. 2017-009 (2018) citing *City of Reno v. Reno Police Protective Ass'n* 118 Nev. 889,
24 896, 59 P.3d 1212, 1217 (2002))

25 The party desiring the EMRB to reject an arbitration award has the burden of demonstrating that these
26 principles are not met. *Id* at 2. Complainants will not be able to meet this burden and the Board's presumption in
27 favor of deferral to the arbitration award should prevail.

28 **1. The Arbitration Proceedings Were Fair and Regular.**

1 As the status reports jointly submitted by the parties and the Award confirm, the arbitration proceedings
2 were fair and regular. (See Joint Status Report dated April 28, 2025 “On December 16 and 17 , 2024, the parties
3 submitted to arbitration with the Hon. Anthony Sciarrillo, Esq.” Both sides were represented by counsel, were
4 afforded the opportunity to present evidence and witnesses and to cross examine witnesses of the opposing side. (see
5 Exhibit A) The hearing was recorded in a transcript and both sides submitted post hearing briefs. (see Exhibit A) No
6 issue of irregularity was raised in the Union’s post hearing brief. Because the proceedings were fair and regular, the
7 Union cannot show that this element of the deferral standard has failed.

8 **2. The Parties Agreed to be Bound by the Arbitration and the CBA Clearly States the**
9 **Grievance and Arbitration Procedure.**

10 The parties agreed to be bound by the arbitration with the only objection to the jurisdiction of the arbitrator
11 being raised by the State and not the Union and being decided by the arbitrator after briefs were submitted by both
12 parties. (Exhibit A, pages 2-3) The Union appeared at the arbitration, presented witnesses and evidence and
13 submitted a post-hearing brief without objection or claim that they did not agree to be bound by the arbitration.
14 (Exhibit A, page 3) Therefore, the Union agreed to be bound by the grievance and arbitration procedure and award
15 on the merits.

16 The CBA clearly sets forth the grievance procedure, which was utilized by the Union in the filing of the
17 grievance. (See Exhibit B and the Article 20 of the CBA on file with the EMRB¹) The Award cites to this grievance
18 procedure and to the Union’s utilization of the procedure (Exhibit A, pages 7 and 14-15) Therefore, it is clear that
19 this element is met and that the Union will not be able to show that this element was not satisfied in any challenge to
20 the Board deferring to the Award.

21 **3. The Decision of The Arbitrator Was Not Clearly Repugnant to the Purposes and**
22 **Policies of the EMRA.**

23 The decision of the Arbitrator was clearly not repugnant to the purposes and policies of the EMRA. The
24 Nevada Court, applying the deferral standards of the National Labor Relations Board, have found that in order to be
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https://emrb.nv.gov/uploadedFiles/emrbnv.gov/content/Resources/State_of_Nevada/AFSCME%2023-25_fin.pdf

1 repugnant an “arbitrator’s decision is not susceptible to an interpretation consistent with” the controlling labor laws.
2 *City of Reno v. Reno Police Protective Ass’n* 118 Nev. 889, 896, 59 P.3d 1212, 1217 (2002)

3 Here, the arbitrator acknowledged that the Union is making a claim that Queen was rejected from probation
4 in retaliation for her union activities which would be illegal (Exhibit A, page 2), but after weighing the facts and
5 evidence found that the rejection from probation was lawful. (Exhibit A, page 26)

6 Similarly, the arbitrator was presented with the Union’s arguments that the State engaged in interference of
7 union activities (Exhibit C, pages 20-26) and found that the union was unable to provide clear and convincing
8 evidence of union interference. (Exhibit A, page 25)

9 Nothing in either of these holdings is inconsistent with NRS 288. The Union may disagree on the
10 conclusions arrived at by the arbitrator after weighing the facts and evidence, but there is nothing legally deficient or
11 inconsistent with NRS 288 with respect to the holdings, therefore this element favors deferral to the Award by the
12 EMRB.

13 **4. The Contractual Issues Were Factually Parallel to the Unfair Labor Practice Issues and**
14 **the Arbitrator was Presented Generally with the Facts Relevant to Resolving the Unfair**
15 **Labor Practice.**

16 The contractual issues in this case were factually parallel to the unfair labor practice issues and the
17 arbitrator was presented with the facts needed to resolve the unfair labor practice issues. The First Complaint alleged
18 that the State “interfered with (Queen’s) rights guaranteed under the EMRA and violated NRS 288.620(1)(a) and
19 288.270(1)(a) when Ms. Watson unlawfully interrogated Ms. Queen about her union activities for the purpose of
20 interfering with, restraining, and coercing the employee from the exercise of her rights guaranteed under the
21 EMRA.” (see First Complaint, paragraph 25) The Union argues this interference claim in detail in its post hearing
22 brief. (see Exhibit C, pages 20-23 and 25:19-21), citing the same facts used in the First Complaint to allege the
23 prohibited practice of interference. (see First Complaint, paragraphs 11-19) After weighing all evidence presented
24 by both the Union and the State about this meeting the arbitrator reached the conclusion that the Union had failed to
25 present clear and convincing evidence of interference. (Exhibit A, page 25)

26 The Second Complaint alleged that the State violated NRS 288.270(1)(a) and NRS 288.270(1)(d) and
27 unlawfully interfered with Complainant’s rights because the unlawful termination was discriminatory, unjustified,
28 and intended to discourage other union members and (State) employees from exercising their rights guaranteed

1 under the EMRA.” (see Second Complaint, paragraph 39) This is identical to the claims presented by the Union in
2 its initial grievance (Exhibit B, page 1, stating Queen “was subjected to retaliatory termination based on her lawful
3 engagement in union activities” and in the Union’s post-hearing statement (Exhibit C, 26:9 asking for a finding that
4 “Ms. Queen was Released from Probation based on Discrimination for Union Activities...” Once again, after
5 weighing all of the evidence and arguments presented by the Union and the State, the arbitrator found Queen’s
6 release from probation to be lawful. (Exhibit A, page 26)

7 Because the alleged interrogation and the release of Queen from probation were the factual bases for the
8 Complaints as well as the factual bases for the grievances, the issues were factually parallel. Because union
9 interference and termination based on union activities were the allegations forming the bases of both the Complaints
10 and the grievance, the Union had the opportunity to present their evidence on these matters at the arbitration hearing.
11 This element favors deferral to the arbitration decision by the Board.

12 IV. CONCLUSION

13 Based on the foregoing, AFSCME will be unable to
14 demonstrate that the Board should not follow the
15 presumption in favor of deferral to the arbitration in this
16 matter and the Board should, therefore, defer to the findings
17 the Award and dismiss the claims in the Complaints.

/s/ Steven Sorensen
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in

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19 DATED this 21st day of June, 2025.
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2025, a true and correct copy of the MOTION FOR DEFERRAL TO ARBITRATION AWARD AND MOTION TO DISMISS was served in ELECTRONIC MAIL to the below:

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/s/ Steven Sorensen

An employee of the Office of the Attorney General

EXHIBIT A

EXHIBIT A

FEDERAL MEDIATION AND CONCILIATION SERVICE

In the Matter of the Arbitration Between:

**American Federation of State, County, and
Municipal Employees (AFSCME)
Local 4041
(Union)**

And

**EXECUTIVE DEPARTMENT OF THE
STATE OF NEVADA
(State)**

Grievance No. 9753

**OPINION
AND AWARD**

**Before
Anthony P. Sciarrillo, Esq.
Arbitrator**

Appearances:

For the Union:

Bradley Combs, Esq.
Nathan R. Ring
Reese Ring Velto, PLLC

For the State:

Steven O. Sorensen, Esq.
Deputy Attorney General

The Executive Department of the State of Nevada (the State) and American Federation of State, County and Municipal Employees (AFSCME) Local 4041 (Union) entered into a Collective Bargaining Agreement (CBA) for the period of July 1, 2023 to June 30, 2025.

On August 23, 2023, a grievance was filed by the Union on behalf of Charlene Queen (the Grievant) alleging the Grievant's termination was an illegal action by the State in retaliation for her union activities. The State denied the grievance contending it was governed by the jurisdiction of the Government Employee Relations Board, and that the subject matter concerning a probationary employee is not arbitrable under the CBA. This matter was submitted by AFSCME to the Federal Mediation and Conciliation Service (FMCS) in accordance with the terms of the CBA.

I was designated as the Arbitrator pursuant to the rules of the FMCS. A telephone conference was held with the parties for the purpose of scheduling the hearing date. During this conference, the State raised the issue of arbitrability and requested the Arbitrator to make a decision on the issue of arbitrability in advance of the hearing.

After a discussion with both parties, it was agreed that the issue of arbitrability would be submitted to the Arbitrator in advance of the hearing date.

The parties submitted simultaneous briefs on the issue of arbitrability on October 31, 2024.

On November 21, 2024, based upon the totality of the submissions, I found the language of the CBA was clear, the Grievant was an employee under the CBA and was permitted to challenge the State's action through the grievance and arbitration procedure set out in the CBA.

The hearing took place in Las Vegas, Nevada on December 16, 2024 and December 17, 2024. At the hearing, the parties provided testimony, submitted evidence, examined and cross-examined witnesses and argued orally on behalf of their respective parties. Bradley Combs, Esq. represented the Union on behalf of the Grievant. Steven O. Sorensen, Esq. represented the State. A transcript of the proceeding was taken.

The Union presented witness testimony from Charlene Queen, Indiana Lawrence, Sandra Patrino, Kelly Morris, Kathy Steffen, Poppy Helgren, Michelle Ashton, Lela Bass and Stephanie Miller. The State presented witness testimony from Corine Watson and Corrine Cosentino. Post hearing briefs were submitted by the parties to the Arbitrator on March 25, 2025.

ISSUE

The parties were not able to come to an agreement on the issue to be addressed in this Arbitration. Further, the Arbitrator was unable to draft an issue that was acceptable to both parties. As a result, each party's view of the issue will be more fully examined in the Discussion section of this Opinion and Award.

LEGAL AUTHORITY

NRS 284.290 Probationary period: Length; dismissal or demotion; notification by appointing authority regarding permanent status.

1. All original competitive appointments to and promotions within the classified service must be for a fixed probationary period of 6 months, except that a longer period not exceeding 1 year may be established for classes of positions in which the nature of the work requires a longer period for proper evaluation of performance.
2. Dismissals or demotions may be made at any time during the probationary period in accordance with regulations adopted by the Commission.
3. Before the end of the probationary period and in accordance with regulations adopted by the Commission, the appointing authority shall notify the Administrator in writing whether or not the probationer is a satisfactory employee and should receive the status of a permanent appointee.

NAC 284.458 During probationary period, a probation employee may be rejected for any lawful reason, as determined by his or her appointing authority.

AFSCME, Local 4041 Collective Bargaining Agreement

7/01/2023-6/30/25

Article 3 Definitions and Resources

"Employee" is a person legally holding a position in the public service.

Article 13 Performance Evaluations

13.5 Standards/elements will be applied fairly, objectively and equitably. The Employer shall take into account equipment and resource problems, lack of training, and other matters outside of an employee's control when applying standards/elements to performance. Pre-approved time away from the job including Sick Leave, Personal Leave days, Annual Leave, and authorized use of Union Representation Leave will not be considered negatively in the application of performance standards and elements. Evaluations shall fully take into account such approved absences in a measure of timeliness and quality of work. Employees serving a six (6) month Probationary Period will be evaluated by an immediate supervisor at the completion of the second (2nd) and fifth (5th) month of employment. Employees serving a twelve (12) month Probationary Period will be evaluated by an immediate supervisor at the completion of the third (3rd), seventh (7th), and eleventh (11th) months. Employees will receive copies of each performance report and official copies will be placed in the Central Records Personnel File, and copies may be maintained in the Supervisor's File and the employee's Department or Divisional Personnel File for reference.

Article 19 Discipline

19.1 The purpose of this Article is to provide for a fair, equitable, and expeditious manner in the application of disciplinary action. The Appointing Authority, or designee will not discipline without just cause.

Article 20 Grievance Procedure

20.2 "Grievance" means an act, omission, or occurrence that an employee believes to be an injustice relating to any condition arising out of the relationship between the Employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in the Union, the administration and interpretation of this Agreement, the applicability of any law, rule, or regulation relating to the employee's employment, imposition of discipline, or other adverse personnel actions.

STATEMENT OF FACTS

Charlene Queen (the Grievant) was hired by the Nevada Department of Veterans Services on August 15, 2022 as a Registered Nurse 4 at the Nevada State Veterans Home in Boulder City (the Facility). The Facility provides lived-in care to Veterans in Southern Nevada. "A registered nurse is expected to be able to function independently; to also be able to supervise the nursing practice of subordinates, which would be licensed practical nurses, certified nursing assistants, and other registered nurses if they're in the role of charge nurse." (T1: 200:9-14) The assignment given to the Grievant was house supervisor.

In addition to the requirements of a registered nurse, the house supervisor's role is to coordinate adequate nursing staff for each department (neighborhood) and each shift. (T1: 20:12-15) The Facility has three (3) neighborhoods: the Mariner Unit for patients in memory care, the Falconer Unit where patients are more self-sufficient and the Sidewinder Unit which is the "sick side" i.e. COVID patients and those who need to be separated to prevent spread of viruses. (T1: 22:15-25, T1: 23:1-9) Each unit has its own schedule. (T1: 24:16-22) To ensure appropriate patient coverage, there is coordination of shifts and overtime for nurses. At times, mandating is required. Mandating is when the nurses are kept on duty after their shift ends to maintain coverage. (T1: 31:9-12) When the Grievant began at the Facility, the nursing shifts were 12 hour work days, 4 days a week, 3 resting days

off, then 3 days per work week, 4 consecutive resting days off in the following week. (T1: 33:14-25) In May 2023, the shifts became 8 hour work days. (T1: 34:4-9)

The first twelve (12) months of this position are probationary. (NRS 284.290) At the end of the probationary period, the employee can be recommended to become a permanent employee or be released. However, the probationary employee can be released at any point over the 12 months. (NRS 284.290) In accordance with the CBA, the probationary employee has a schedule of three (3) evaluations. (U-9, Article 13.5)¹

The Grievant's first performance evaluation was at three (3) months, conducted in November 2022. Her evaluator was the Director of Nursing Services, Poppy Helgren. It was Ms. Helgren who participated in hiring her. The Grievant's rating was "Meets Standards" on all categories: Quality of Work, Quantity of Work, Work Habits, Relationships with Other Persons, Taking Action Independently, Meeting Work Commitments, Analyzing Situations and Materials, and Supervising the Work of Other Persons. (U-4)

It was in November when the Grievant contracted COVID and was required not to come to work. In January, the Grievant received an oral

¹ The Union exhibits are identified alphabetically. The State exhibits are identified numerically.

reprimand by Ms. Helgren for intentionally failing to record time off. This reprimand was documented in her personnel file. (S-E)

The Grievant's second performance evaluation was conducted on April 14, 2023, by Corine Watson, the Interim Director of Nursing Services. Ms. Watson replaced Ms. Helgren. At this time, Ms. Watson was the Grievant's supervisor for approximately a month. (T1: 201:4-19) The Grievant's rating was "Meets Standards" in all categories. (U-4)

The Grievant joined AFSCME Local 4041 (Union) on March 7, 2023. In June, she became more engaged with the Union. Based on her concerns regarding scheduling and staffing after the change in shift hours in May, the Grievant met with a Union representative. They had an ongoing discussion about patient coverage and the nurses' work/life balance. They collaborated on a petition to meet with management to discuss unfair shifts and unsafe staffing protocol. (U-6)

The third performance evaluation was conducted by Ms. Watson. This was the 11th month evaluation held on July 12, 2023. The Grievant's rating was "Meets Standards" except in the category of Analyzing Situations and Materials. Here she "Did Not Meet Standards." In the rater's comments, it is stated the Grievant is to meet with her supervisor in two (2) weeks to reevaluate this area and discuss what support may be needed. (S-O)

On July 24, 2023, the Grievant together with other union members and the Union's organizer delivered a petition regarding the shift and coverage issues to the Director of the Department of Veteran's Affairs, Fred Wagar. (U-10, T1: 44:4-15)

On July 25th, Ms. Watson emailed Human Resources, recommending to release the Grievant from probation. (S-I)

The Grievant was released from probation on July 31, 2023.

During Grievant's time at the Facility, three (3) incidents are cited on record and are in the Grievant's personnel file:

Resident A: The Grievant admitted a patient to the Facility without a COVID test on arrival. This patient subsequently died from complications of COVID. Additionally, staff and patients became infected. (S-F)

Resident B: The Grievant admitted a patient despite the Facility not being able to provide the patient's required feeding apparatus for water and nutrition. (S-G)

Resident C: The Grievant admitted a patient without charting required oncology appointment, thus delaying care for 11 months.

(S-H, S-R)

THE STATE'S POSITION

The issue to be determined is whether the Grievant was lawfully released from probationary status, and if not, what should be the remedy. It is the State's position, the Grievant was properly rejected from probationary status. She was legally released from probation because she demonstrated she lacked the understanding of policies and procedures of the Facility to be successful. Her grievance should be denied. The Union claims anti-union animus and retaliation for the State's actions. The Union's argument is the State did not have just cause under the CBA to terminate the Grievant's employment. Just cause is not the standard because the Grievant was a probationary employee and not a permanent employee. Under the CBA, just cause only applies to disciplinary actions. (S-A) The State did not discipline the Grievant. However, even if the just cause standard is applied, the Grievant's job performance would warrant a rejection for permanent employment.

The State's actions were consistent with state law. Dismissals or demotions may be made at any time during the probationary period in accordance with

regulations adopted by the Human Resources Commission. (NRS 284.290(2)) Additionally, during the probationary period, a probationary employee may be rejected for any lawful reason as determined by his or her appointing authority. (NAC 284.458) Probationary employment is only mentioned four (4) times in the CBA. When mentioned, it is to define probation time frames, schedule of evaluations and placement regarding layoffs. None of the provisions address release nor do they conflict with NAC 284.458. Under NRS 288(5)(a), if there was a conflict, the CBA would prevail. The CBA does not speak to rejection from probation or a standard. There is not an unlawful reason for the Grievant's release. (S-A)

The Union's claim of retaliation for union activity is weak. The Union must make a prima facie case showing sufficient support for the inference that protected conduct was a motivating factor. The Union would need to show by a preponderance of evidence the same action would have taken place even in the absence of protected conduct. (Wilson v. North Las Vegas Police Department, EMRB A1-045925, 12:13)

Nowhere in the CBA does it state that the just cause standard applies to a rejection from probation. There is no mention in the CBA of rejection from probation.

If the just cause standard applied, the Grievant's release would not be for any arbitrary, capricious, or illegal reason based on facts supported by substantial evidence and believed by the employer to be true. Under these standards, the State is still within its rights to terminate the Grievant's employment. The record clearly shows she was a liability. The Grievant's rejection from probation was in the best interest of the Facility and its patients

Regardless of what standard applies, the Grievant should not be returned to her position.

THE UNION'S POSITION

The grievance filed on behalf of the Grievant should be sustained. The State did not have just cause under the CBA to terminate the Grievant's employment. The State's actions were motivated by illegal and retaliatory anti-union animus. Just cause is the proper standard for determining the propriety of the Grievant's termination. The State did not meet this standard. The Grievant's employment should be reinstated and be made whole for any backpay.

According to the CBA, "an employee in a bargaining unit who has been dismissed, demoted, or suspended may pursue a grievance related to that dismissal, demotion, or suspension through the grievance procedure provided in

this Article." (U-9 CBA Article 20.9.1.2) The Grievant was an employee as defined by the CBA as a person legally holding a position in the public service. (U-9 CBA Article 3) As an employee, the Grievant was dismissed from employment. She may file a grievance. Her termination was a disciplinary action. The standard for discipline in the CBA is just cause.

The State did not have just cause. The Grievant was not provided adequate guidance or training in her role as house supervisor. Ms. Watson, current Director of Nursing Services and the Grievant's immediate supervisor admitted in her testimony and on the record, that the Grievant was provided little guidance in her role and Ms. Watson did not have the time to coach or train her throughout her probationary period. (T1: 126: 16-22) Moreover, the Grievant did not receive individual feedback. (T1: 187:5-25)

It was only two weeks prior to her discharge that the Grievant did not meet standards. (S-O) Her first evaluation, at the three (3) month mark, she met standards on all categories provided on the State of Nevada Employee Report on Performance. It was conducted by the Director of Nursing Services at the time, Poppy Helgren. Additionally, she received positive notes on her dedication and attitude. At seven (7) months of employment, again the Grievant met expectations on all categories. This evaluation was conducted by Ms. Watson who at the time was the Interim Director of Nursing Services. (S-N)

The Grievant's first and only "Does Not Meet Expectations" rating was given on her final performance evaluation, July 12, 2023, the eleventh (11th) month evaluation. It was the last evaluation of her probationary period. She met all standards, except for "Analyzing Situations and Materials." There was no time to correct the deficiency. Her employment was terminated sixteen (16) days later. The Grievant was not provided adequate notice of her responsibilities or how she could improve them. Up until that point, she met all expectations. In addition, prior to her release, there was only an oral reprimand regarding submission of inaccurate timesheets. This honest mistake had no patient or Facility consequences. (U-2)

The Grievant was an exemplary employee. Aside from meeting standards, more than one witness testified that the Grievant was supportive, engaged and proactive as a coworker. (T2: 195:21-25, 234:15-20, 247:3-6) The State points to three (3) patient incidents that led to the Grievant's release. However, in each of these instances, the Grievant was not solely responsible. The Facility has systems to catch any human error. (T1: 146:1-5, 148:8-11) Additionally, admission policies and protocols were unclear. When she sought clarification, the Grievant was met with hostility. (U-6) The Grievant is being singled out for her union activity. Others who made similar mistakes would not have been terminated.

The Grievant's employment was terminated due to personal hostility and anti-union sentiment. Her participation in organizing a petition to address staffing issues runs parallel to the hostile interactions with Ms. Watson, the unfavorable performance review and ultimately termination of her employment. She joined the Union in March 2023. In June, she became involved with the Union representative in creating a petition to management addressing staffing issues, which she felt were unstable and distributed unfairly. (T1: 43:17-23) It was at this time her work was assessed as unsatisfactory. (S-S) As the Grievant became more of a vocal and participatory union member, her supervisor made comments regarding her role in the Union. The Grievant feels Ms. Watson's comments interfered with her union activity. This anti-union animus manifested in her last performance review. Not a coincidence, after delivery of the petition to Department of Veteran Affairs Director Fred Wagar, less than 24 hours after engaging in protected activity, Grievant's employment was terminated. (U-6)

EXHIBITS

Union Exhibits	State Exhibits
<p>U-1 Emails</p> <p>U-2 Grievant's Personnel file</p> <p>U-4 Grievant's Performance Evaluations</p> <p>U-6 Statements Part of Grievance Process</p> <p>U-7 Schedule (May & June 2023)</p> <p>U-9 Collective Bargaining Agreement</p> <p>U-10 Video</p> <p>U-11 HR Memo</p>	<p>S-A Collective Bargaining Agmt.</p> <p>S-B NRS 284.290</p> <p>S-C NRS 288.140 - 288.151</p> <p>S-D NAC 284.448 - 284.460</p> <p>S-E Document of Oral Warning</p> <p>S-F Resident A</p> <p>S-G Resident B</p> <p>S-H Resident C</p> <p>S-I Probationary Performance Eval</p> <p>S-J Email Watson to Quinones</p> <p>S-K 11 Punch Data for the Grievant</p> <p>S-L Bonner/Washington v CNLV</p> <p>S-M Jackson v Clark County</p> <p>S-N 7 month Evaluation</p> <p>S-O 11 month Evaluation</p> <p>S-P Probationary Performance Email</p> <p>S-Q Lack of Nurse Notes Admission</p> <p>S-R Delayed Oncology Treatment</p> <p>S-S House Supervisor Report</p> <p>S-T NEATS Timesheets</p>

DISCUSSION

I have thoroughly reviewed and carefully considered the testimony, evidence and arguments submitted into the record by the Union and the State.

The Grievant was hired in August 2022 at the State of Nevada Veteran's Home. She was initially hired as a Registered Nurse 4. Ms. Helgren assigned her the role of house supervisor because she felt the Grievant displayed leadership qualities. (T2: 196:5-7) Prior to this role, the Grievant had no supervisory experience. (S-P) Her position as a Registered Nurse 4 in the house supervisor role was probationary for the first year. As a probationary employee, the Grievant was required to have performance evaluations throughout the year: at 3 months, 7 months and 11 months. At the end of the year, a probationary employee is either recommended to become a permanent employee or rejected from probation.

The Grievant was rejected from probation on July 30, 2023.

The parties did not agree to an issue during the arbitration. The Union argues the State must have just cause to release the Grievant from probation. The Grievant met expectations on all her evaluations, except for one area on her 11th month review. (U-4) The Union asserts the Grievant's termination was the result of

anti-union sentiment and personal hostility and that the State did not have just cause to release her.

The State argues rejection from probation may be for any lawful reason. Just cause is not the standard. The CBA requires just cause when there is a disciplinary action. (S-A) Release from probation is not disciplinary. The Grievant was not appropriate for her position based on her performance. Because of Grievant's performance, the State lawfully rejected her from probationary status. However, if just cause is the standard, Grievant has a record of not following protocol to the detriment of the patients and the Facility.

The Grievant, although a probationary employee, is an employee as defined by the CBA: a person legally holding a position with public service. The CBA does not specifically address probationary employees in terms of release or rights. However, the CBA uses broad language when defining a grievance. (S-A, 20.9.1.2) It is an act, omission, or occurrence that an employee believes to be an injustice relating to any condition arising out of the relationship between the Employer and an employee. (S-A, 20.2) Here, the Grievant as an employee believes there was an injustice regarding her release from probation.

The Union would like just cause to be the proper standard. Just cause is the standard under Article 19 of the CBA for discipline. (U-9) The Union assumes the

release from probation is disciplinary. It is my opinion, based on the record, the State did not discipline the Grievant to invoke the just cause standard. The actions of the State concerning the Grievant, do not fall under discipline according to the CBA. The only record of discipline was an oral warning regarding the Grievant's inaccurate timesheets submitted for her absence when she had COVID in November 2023. (T1: 135:8-25, 136:1-25, S-E)

According to the State's Human Resources Officer, Corrine Cosentino, release from probation is not a disciplinary act. (T2: 112:13-20) There is no standard for rejecting an employee from probation. (T2: 113:16-24) Because the CBA does not speak to probationary employees, I look to Nevada State law. It states, during the probationary period, a probation employee may be rejected for any lawful reason, as determined by his or her appointing authority. (NAC 284.458) Therefore, the standard of "lawful" will guide my analysis.

The Union argues the Grievant was released from probationary status because of her active participation with the Union. It was in June, when the Grievant engaged with the Union due to what she felt was unfair scheduling, her own as well as other nurses. (U-6) Her involvement consisted of conversations and meetings with the Union representative about unstable staffing. This engagement led to a creation of a petition to be presented to management. The petition was presented July 24, 2023. (U-10)

The Grievant testified she felt Ms. Watson, her supervisor, was interfering with her union rights. (T1: 67:17-19, 78:17-20, 80:6-14) According to the Grievant, she had more than one interaction with Ms. Watson concerning her participation in the Union. (U-6) These interactions took place around the time of the petition. The Grievant claims Ms. Watson made comments that she was not a part of the Union in her supervisory capacity. These exchanges occurred in the Grievant's 11th month of probation which also coincided with the Union's petition. As evidence of the personal hostility, the Union provided witnesses who testified Ms. Watson treated the Grievant differently, describing Ms. Watson as targeting the Grievant. (T2: 213:14-18, 262:6-21, 263:1-10)

It is unclear if there was interference. There is no testimony or evidence the Grievant was prevented from participating with the Union. When Grievant was accused of harassing fellow employees about the petition, Ms. Watson, her supervisor, addressed it directly with the Grievant. Ms. Watson, a Union member herself, took the Grievant at her word that there was no harassment. There was no action taken and no notification in the Grievant's personnel file. (T1: 223:6-15) Also there was no disciplinary action after the incident concerning Resident B and his admittance. (T1: 177:7-15) As mentioned above, the only record of discipline was the oral warning regarding the Grievant's inaccurate timesheets in November. (T1: 135:8-25, 136:1-25) This was before Ms. Watson was her supervisor and before the Grievant joined the union. (S-E)

Dismissals or demotions may be made at any time during the probationary period in accordance with the regulations adopted by the Human Resources Commission. (NRS 284.290(2)) The Grievant's release was on July 30, 2023. In its final brief, the Union focuses on the timing of the Grievant's union activity and that it is in direct correlation with the Grievant's unfavorable performance evaluation and eventual release.

The probationary period for this position is a full year for a reason. When the Grievant was evaluated at the 7th month mark, Ms. Watson was her supervisor for approximately a month. She relied on Ms. Helgren's professional opinion about the Grievant's performance. The Grievant met all standards. (S-N)

There is evidence the Grievant's job performance was not satisfactory. After Ms. Watson became her direct supervisor, there is a record of concerns. Ms. Watson's email of June 20, 2023 describes the Grievant of having difficulty meeting the challenges of her position. (S-P) Ms. Watson acknowledges that she now has a "clearer picture of her capabilities" with supervising the Grievant after several months rather than the one month as on the 7th month evaluation. There is evidence of the three residents (A, B & C) where their admission by the Grievant compromised the patients' health and the liability of the Facility. (S-I) There is testimony of the Grievant's irresponsibilities with keys to narcotics. (T1: 213:19-25, 214:1-19)

The State presented witnesses Ms. Watson and Ms. Cosentino. Each witness spoke to evaluations and performance during probation. I find each witness credible in her testimony. Ms. Watson spoke of providing tools to support the Grievant to pass probation, to help her succeed and assist with her growth. (T1: 210:15-25, T1: 211:1-13) One such tool was a supervisor checklist. The checklist was sent to a group of house supervisors in June. It is common practice to send guidance to a team so everyone is privy to the same training and expectations. It is also for an employee not to feel targeted, because the State process is not to be punitive. However, the checklist was specifically for the Grievant (T2: 44:1-22) The approach communicated by Ms. Watson was not to single out or punish, but to educate. (T2: 45: 2-8, T2: 46:1-6)

Ms. Cosentino's testimony focused on coaching. (T2: 138:1-3) It is ongoing conversations, emails and evaluations. At each evaluation there is a discussion of the ratings and the job performance. (T2: 125:2-5) The testimony of both supervisors describes an evaluation system and a probation term that is designed to educate and retain employees. Ms. Helgren spoke to growing people. (T2: 198:19-21) It is of note, that Ms. Watson expressed in an email after the Grievant's 11th month evaluation, that she did not have time to coach and train the Grievant during most of the probationary period. (S-P: 7/12) However, at the time of this email, Ms. Watson was the Grievant's supervisor for approximately 5 out of the 10 months of the Grievant's employment. Ms. Watson suggested in a follow-

up email, that the Grievant be offered a different position with a 12 month probationary period to be able to gain supervisory experience. (S-P: 7/25)

A probationary employee can be rejected at any time during the probation term. (NRS 284.290(2)) However, after 12 months, the employee cannot be rejected as she is then permanent. (T2: 108:17-24) An interceding event following the 11th month evaluation can lead to a rejection from probation. (T2: 153:6-9) Release from probation is not a disciplinary act. (T2: 112:13-16) There is no standard for rejecting an employee from probation. (T2: 113:19-24)

The Union has been unable to provide clear and convincing evidence of union interference.

Accordingly, based on the totality of the testimony and the evidence presented through the exhibits, the Grievant was properly rejected from probationary employment by the State.

AWARD

The State lawfully released the Grievant, Charlene Queen, from probationary employment. Therefore, the grievance is denied.



Anthony P. Sciarrillo, Esq.

Arbitrator

Dated:

State of: New Jersey

County: Union

On this 14 day of MAY, 2025 before me personally came and appeared Anthony P. Sciarrillo, Esq., to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed same.



LUIS GARCIA
Notary Public of New Jersey
ID #50169864
Commission Expires Sept. 14, 2026

EXHIBIT B

EXHIBIT B

From: [Moumita Ahmed](#)
To: [Fred Wagar](#)
Cc: [Labor Relations](#); [El Serrano](#); [Lalo Macias](#); [Corrine Cosentino](#); [Matthew Lee](#); [Fred Wagar](#)
Subject: Formal Grievance Regarding Retaliation Against Charlene Queen for Union Activities
Date: Tuesday, August 22, 2023 1:54:31 PM
Attachments: [Outlook-ib15el2n.png](#)

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

I am writing to formally file a grievance on behalf of Charlene Queen, a recently terminated employee of Veteran's Home, who was subjected to retaliatory termination based on her lawful engagement in union activities, which are protected under state law and the CBA. Our concerns are rooted in the undeniable evidence that suggests her termination was unjust, in violation of her rights under the Collective Bargaining Agreement (CBA) and constitutes a breach of labor laws.

Charlene Queen was hired as a Registered Nurse 4 on August 15th, 2022. Almost immediately after Charlene was hired, she was designated as a House Supervisor over the Mariner, Sidewinder, and Falconer. At any given time, Charlene was required to supervise any given house depending on Yolanda's scheduling. During her probationary period, Charlene took issue with a number of actions taken by management personnel, which included, but were not limited to, scheduling and communicating to other nurses. Because of these actions, Charlene became active in the union and engaged in actions on behalf of the union and her coworkers.

It is important to note here that Charlene consistently received satisfactory reviews during her term of employment and did not receive a "does not meet standards" review until her union activity became apparent and open. Even in the one circumstance in which Charlene received a "does not meet standards" checkmark, her overall review was still satisfactory.

The reasons outlined below exemplify the deeply concerning circumstances that lead us to conclude Charlene's dismissal was an act of retaliation for her involvement in union-related endeavors on behalf of herself and her co-workers:

Contradictions in Explanation: The assertion made by the state that Charlene's termination was solely based on her job performance and not motivated by her union activities is inconsistent with the evidence and facts. Her personnel file belies the

state's assertion. There has only been one oral warning against Charlene. That oral warning pertained only to her being paid during the time she was positive with COVID. This oral warning had nothing to do with any matters involving her clinical judgment and did not address any of the alleged resident incidents now mentioned in her personnel file. The newly added explanations are merely now generated to somehow justify the termination from employment, which actually because of her activities on behalf of herself and her coworkers.

Communications between HR Manager and DON Corrine Watson (lack of proper training): On July 12th, email exchanges between Blanche, the HR manager, and Corrine Watson, the Director of Nursing (DON), provide evidence that Charlene was not provided with the necessary coaching and training to excel in her role. Corrine admits that she does not have the time to train Charlene and requested that Charlene be demoted to RN 4 (her actual job classification) from House Supervisor. This lack of training is straight from management personnel. It is inappropriate to terminate an employee's employment when management admits it improperly trained the employee.

Questionable Decision-Making Authority: It is important to note that Blanche, the HR manager, assumed the decision-making authority for Charlene's termination, and she contradicted the DON's recommendation for a transfer back to Charlene's appropriate RN4 position instead. Blanche's qualifications to determine the impact on patient care, especially when compared to Corrine's on-the-ground expertise, raises concerns over the decision-making process in the termination. It is also important to note that issues with the residents are pinned on Charlene even though there are several RNs in the Veterans Home who serve as House Supervisors. There is no specific evidence suggesting Charlene is either partially or solely responsible for the matters of which she is now being accused in her file. Moreover, there is no evidence that these matters were investigated or addressed with Charlene directly. It is clear that just cause requires notice to an employee of performance allegedly falling below standards.

Focus on Union Activities: The most concerning aspect of Charlene's termination involves the state's clear focus on Charlene's union activities. This emphasis is apparent in Corrine's report discussing Charlene's evaluation, despite the fact that Charlene's actual evaluation makes no reference to her union involvement or

activities. The email discussion also mentions that Charlene is unable to manage "disruptive employees;" however, managing employees is not part of an RN4's job duties. Additionally, Blanche introduced the concepts of "discord" and staffing issues as justifications for Charlene's termination. Notably, in an email dated July 25th, 2023, Blanche anticipates potential workplace issues due to Charlene's ongoing engagement in union activities. This is protected activity and cannot be a basis for termination. This is a clear violation of the CBA and applicable labor laws. Moreover, the union filed an EMRB complaint in late July concerning harassment of Charlene for engaging in union activities, and within days, the state terminated Charlene's employment. This is clearly an action unlawfully taken in retaliation.

Suspect Language Usage: Blanche's choice of words, particularly the term "discord," raises suspicion that Charlene's union activities are being used to punish her. This is quite true given that Charlene's performance evaluations do not mention any such issues. This raises concerns about Blanche's intentions and suggests that Charlene's exercise of her legal right to engage in union activities is nefariously being interpreted as causing workplace discontent. Regardless of how Blanche personally interprets Charlene's union protected actions, it does not justify Charlene's termination.

Based on the evidence outlined above, it's apparent that Charlene's termination was not based on her job performance but was improperly and illegally influenced by her union activities. Charlene is a good worker who was entrusted with a supervisor's role without the benefits. She was promoted to a supervisor position very shortly after being employed. She clearly was a good performer in the workplace. The fact that the Veteran's Home terminated her based on her participation in union activity is a clear violation of her rights under the CBA and labor laws, which protects her freedom to participate in such activities without facing retaliation.

Reinstatement: Immediate reinstatement of Charlene Queen with full wages, benefits and accurate seniority. Full back pay on any eligible higher classification Charlene Queen served in other than RN4.

Investigation: A thorough investigation into the circumstances surrounding Charlene's termination to ensure accountability for any retaliatory actions and to ensure such retaliation does not occur to her or any other member in the future.

Compensation: Compensation for any lost wages and benefits incurred due to the unjust termination and any back pay on any wages for any higher classification Charlene Queen served.

Policy Review: A review of company policies and practices to ensure compliance with labor laws and the protection of employees' rights to engage in union activities.

We anticipate a prompt response to this grievance, indicating your commitment to addressing this matter appropriately. We strongly believe in upholding the principles of fairness, justice, and the protection of employees' rights within the workplace.

Moumita Ahmed

Union Representative

AFSCME Local 4041

(347) 753-3634

**MY PRONOUNS
ARE SHE/HERS**



"To speak for labor; to plead the cause of the men and women and children who toil; to serve the working class, has always been to me a high privilege; a duty of love."

EXHIBIT C

EXHIBIT C

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IN LABOR ARBITRATION BEFORE
ARBITRATOR ANTHONY P. SCIARRILLO

In the Matter of Arbitration Between:	Grievance #9753
AFSCME Local 4041 Union,	
And	
Executive Department of the State of Nevada,	
Employer,	
Re: Wrongful Termination of Charlene Queen,	
Grievant	

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POST-ARBITRATION BRIEF OF AFSCME LOCAL 4041

AFSCME, LOCAL 14 (hereinafter "Union" or "Local 14"), hereby files its Post-Arbitration Brief on behalf of Grievant, Charlene Queen ("Ms. Queen"). Ms. Queen's release from her probation with the Nevada Department of Veteran's Services, Southern Nevada State Veteran's Home (hereinafter "Veteran's Home" or "State") was improper, motivated by anti-union sentiment, and without just cause.

Local 4041's grievance filed on behalf of Ms. Queen should be sustained because the State did not have just cause under the Collective Bargaining Agreement ("CBA") to terminate Ms. Queen's employment. Furthermore, the State's termination of Ms. Queen was motivated by illegal and retaliatory anti-union animus.

1 As demonstrated throughout the arbitration hearing, Ms. Queen received “Meets
2 Standards” ratings on her performance reviews, even just weeks prior to her release from
3 probation she received such a rating. Further, as the state admits, Ms. Queen was not trained or
4 mentored adequately, and the actions which the state claims led to her release from probation
5 were speculative, did not result in any written discipline, and were merely a pretext for a release
6 from probation motivated by anti-union animus and personal hostility.

7 In opposition to the State’s contention, Ms. Queen’s release from probation was
8 disciplinary, and the standard for her release is *just cause*. It is a bedrock principle of just cause
9 that employees must be treated fairly under the totality of the circumstances. The State did not
10 meet this basic standard here, and Ms. Queen should be reinstated to her employment with the
11 Nevada State Veteran’s Home and be made whole for any backpay.

12 I.

13 **STATEMENT OF THE ISSUE**
14

15 As the parties did not agree to a statement of the issue, the Union proposes the following
16 statement(s) of the issue:

17 1. Did the State have just cause to release Ms. Queen from Probation, terminating her
18 employment with the State, if not, what should be the remedy?

19 II.

20 **STATEMENT OF FACTS**
21

22 **A. Ms. Queen’s Background**

23 Ms. Queen started her journey in nursing when a friend’s mom started teaching a CNA
24 class at Ms. Queen’s local high school.¹ She ultimately received her CNA license 2002.² She
25 became a registered nurse in 2008³, and worked for a few medical facilities in her home state
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27 ¹ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 17, Lines 10-14.

28 ² *Id* at Lines 14-17.

³ *Id* at Lines 14-18.

1 of Arizona.⁴ She then moved to Las Vegas, where she worked at Boulder Hospital, a local
2 surgical center, and a few different hospice providers.⁵ Ms. Queen had heard of an open
3 position at the State of Nevada Veteran's Home through some friends that volunteered there,
4 and made the decision to apply.⁶ This decision was personal to her, as she had a cousin who
5 was killed in the line of duty in Afghanistan.⁷

6 While Ms. Queen had applied for a "charge nurse" position, the Director of Nursing
7 Services at the time, Ms. Poppy Helgren, determined that due to her positive thinking and skills
8 that she would be made a "House Supervisor."⁸ After Ms. Queen accepted the offer, she started
9 her position as House Supervisor in August of 2022.⁹

10 **B. Ms. Queen's Performance Evaluations**

11 Ms. Queen's first performance evaluation was a 3-month evaluation conducted in
12 November of 2022.¹⁰ Her evaluator, the Director of Nursing Services, Poppy Helgren, stated
13 that Ms. Queen's dedication was clear, she had an infectious, positive attitude, and worked
14 without prompting or prodding.¹¹ Further, she received a "Meets Standards" rating on Quality
15 of Work, Quantity of Work, Work Habits, Relationships With Other Persons, Taking Action
16 Independently, Meeting Work Commitments, Analyzing Situations and Materials, and
17 Supervising the Work of Other Persons.¹² Ms. Queen's overall rating was "Meets Standards,"
18 and Ms. Helgren recommended that Ms. Queen start attending Nurse Management classes and
19 develop a relationship with a mentor.¹³

24 ⁴ *Id.* at Page 18, Lines 4-16.

25 ⁵ *Id.*

26 ⁶ *Id.* at Lines 17-22.

27 ⁷ *Id.*

28 ⁸ See 12/17/24 Condensed Arbitration Transcript of Charlene Queen, Pages 195-196, generally.

⁹ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Page 22, Lines 4-6.

¹⁰ See **Exhibit 4, Performance Evaluations**, at AFSCME-000144 – 000145.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

1 Ms. Queen's second performance evaluation was conducted in April of 2023 by
2 Corrine Watson, the Interim Director of Nursing Services.¹⁴ Ms. Watson gave Ms. Queen a
3 "Meets Standards" rating on all of the above categories, as well as an overall rating of "Meets
4 Standards."¹⁵ Ms. Watson stated that Ms. Queen "manages weekends in the absence of
5 management without incident" and was "independent with readmissions and relief charge
6 nurse."¹⁶ While Ms. Watson left the "Goals and Objectives" section blank, she mentioned that
7 Ms. Queen should "focus on communication with the scheduler when there are call-offs to
8 ensure consistency in staffing protocols" and "Complete assigned state trainings as required."¹⁷
9 Ms. Watson ultimately reported that Ms. Queen was an asset to the team.¹⁸

10 Ms. Queen's third Performance Evaluation was also conducted by Ms. Watson, this
11 time an 11-month evaluation conducted on July 12, 2023.¹⁹ Ms. Queen received a "Meets
12 Expectations" rating on all categories, with the exception of "Analyzing Situations and
13 Materials."²⁰ Ms. Watson gave Ms. Queen an overall rating of "Meets Expectations" and stated
14 that "[t]his supervisor is confident that she will improve in analyzing situations before the end
15 of this evaluation period."²¹ This was Ms. Queen's last performance evaluation prior to her
16 release from probation on July 31, 2023.²²

17 C. Ms. Queen's Union Activity

18 Ms. Queen first joined the AFSCME Local 4041 on March 7, 2023.²³ She decided to
19 get more involved in the Union on June 16, 2023 after a number of issues she was
20 experiencing.²⁴ These issues included being denied personal time for June 27-28, 2023, being
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22
23 ¹⁴ *Id* at AFSCME-000149 - 000150.

24 ¹⁵ *Id.*

¹⁶ *Id.*

25 ¹⁷ *Id.*

¹⁸ *Id.*

26 ¹⁹ *Id* at AFSCME-000155 – 000156.

²⁰ *Id.*

27 ²¹ *Id.*

²² *See Exhibit 2, Personnel File*, at AFSCME-000107.

28 ²³ *See Exhibit 6, Charlene Queen Contemporaneous Statements* at AFSCME-000181

²⁴ *Id* at 000186.

1 told to ‘find her own coverage’ for an already approved July 2-8, 2023 vacation, and having a
2 feeling that she was treated unfairly by her scheduler, Yolanda, who was seemingly giving
3 scheduling preferences to friends while other nurses worked 16 hour days.²⁵ The union rep to
4 the Veteran’s Home, Blanca, then called Ms. Queen back on Monday, June 19, 2023.²⁶ Ms.
5 Queen called Blanca back on Thursday, June 19, 2023, and relayed the above concerns
6 regarding the unstable staffing situation and favoritism.²⁷

7 On July 13, 2023, Ms. Queen met with Blanca from AFSCME Local 4041 again, where
8 they agreed to create a petition to meet with management over unsafe mandating protocols
9 where nurses were routinely required to work a 16 hour shift without prior notice.²⁸ Six days
10 later, on July 19, 2023, Ms. Watson admonished Ms. Queen for her union activities by telling
11 her that “you are the house supervisor, you shouldn’t even be part of this.”²⁹ Five days later, on
12 July 24, 2023, Ms. Queen, along with other union members and AFSCME Organizer Jason
13 Hursey, delivered the above-referenced petition to Department of Veteran’s Affairs Director
14 Fred Wagar.³⁰³¹

15 **D. The State’s Actions**

16 ON July 12, 2023, Ms. Watson emailed HR Officer Blanche Dieket, as Ms. Dieket had inquired
17 as to the status of Ms. Queen’s upcoming end of probation.³² Ms. Watson stated that Ms. Queen was
18 given very little guidance in her role as House Supervisor, but met standards.³³ *On the day after Ms.*
19 *Queen’s participation in delivering the petition from the Union, on July 25, 2023,* Ms. Watson
20 emailed Blanche Dieket, Human Resources Officer for the Nevada Department of Veteran’s
21
22

23 ²⁵ *Id* at 000186-188.

24 ²⁶ *Id* at 000188.

25 ²⁷ *Id* at 000188.

26 ²⁸ *Id*.

27 ²⁹ *Id* at AFSCME-000196.

28 ³⁰ See **Exhibit 10, 7.24.23 Video of Delivery of Union Petition.**

29 ³¹ If you recall, at the time of the arbitration we could not place the exact date of the delivery of the petition. I
have since been able to locate it’s date via the “inspector” function of QuickTime Player which shows that the
petition delivery was on July 24, 2023.

30 ³² See **Exhibit 1**, Emails, at AFSCME-000064.

31 ³³ *Id*.

1 Services, asking “What is the status of this release.”³⁴ The basis of this recommendation from
2 Ms. Watson was Ms. Queen’s alleged lack of follow up in a patient’s chart *which occurred 9*
3 *months prior.*³⁵ At or around this time, 3 separate “Probationary Performance Evaluations” were
4 added to her personnel file, without the ability for Ms. Queen to respond, sign, or discuss them.³⁶
5 Ms. Queen was ultimately released from probation on July 31, 2023.³⁷

6 III.

7 LEGAL ARGUMENT

8 **A. THE STATE DID NOT HAVE JUST CAUSE TO RELEASE MS. QUEEN FROM** 9 **PROBATION**

10 **i. Just Cause is the Proper Standard for Determining the Propriety of Ms.** 11 **Queen’s Termination**

12 The collective bargaining agreement provides “an employee in a bargaining unit who has
13 been *dismissed*, demoted, or suspended may pursue a grievance related to that *dismissal*,
14 demotion, or suspension through the grievance procedure provided in this Article; or the
15 procedure prescribed by NRS 284.390.”³⁸ (Emphasis Added). The CBA defines “employee” as
16 “a person legally holding a position in the public service.”³⁹ This is separate from a “Permanent
17 employee” who is “a classified employee who has successfully completed the Probationary
18 Period for any class held during continuous State service.”⁴⁰

19 There is no doubt here that the grievant was certainly an “employee” as defined in the
20 CBA, and she was *dismissed from her employment*. Thus, she may file a grievance under Section
21 20.9.1.2 of the CBA.⁴¹ Because the standard provided for discipline in the Collective Bargaining
22 Agreement is just cause, Ms. Queen’s termination must be for just cause.⁴²

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24 ³⁴ See Exhibit 1, Emails, at AFSCME-000066.

25 ³⁵ See Id.

26 ³⁶ See Exhibit 4, Performance Evaluations, at AFSCME-000157 – 000159.

27 ³⁷ See Exhibit 2, Personnel File at AFSCME-000107.

28 ³⁸ See Exhibit 9, Collective Bargaining Agreement at Section 20.9.1.2; AFSCME-000431.

³⁹ Id at AFSCME-000363.

⁴⁰ Id at AFSCME-000367.

⁴¹ Id at AFSCME-000363.

⁴² Id at AFSCME-000424.

1 **ii. The State Did Not have Just Cause**

2 **(a) Just Cause Standards**

3 “Just cause, like justice itself, is not susceptible of precise definition. It is a flexible
4 concept, embodying notions of equity and fairness, that can only be determined upon an
5 examination of the facts and circumstances of each individual case.”⁴³ While just cause is not
6 easily identifiable, the “Seven Tests” from arbitrator Carroll Daugherty provide some easily
7 identifiable guidance. If the answer to any of these questions is no, the employer did not have
8 just cause:

9 1) Notice. Did the employer give the employee forewarning or
10 foreknowledge of the possible or probable disciplinary
11 consequences of the employee's conduct? According to
12 Daugherty, this forewarning could be communicated either orally
13 and penalties to the employee. He noted that the employer has the
14 right to unilaterally promulgate reasonable rules and give
15 reasonable orders unless it is limited by the collective bargaining
16 agreement. He recognized that in some circumstances this
17 communication was not necessary because certain offenses are so
18 serious that an employee could be expected to know his conduct
19 is improper and heavily punishable.

20 (2) Rule reasonably related to operations. Was the employer's rule
21 or managerial order reasonably related to the orderly, efficient,
22 and safe operation of the company's business? Daugherty
23 acknowledged that an employee should generally obey an order,
24 even if it is unreasonable, then file a grievance. There is an
25 exception where obeying the order would seriously and
26 immediately jeopardize the employee's personal safety or
27 integrity.

28 (3) Investigation prior to discipline. Did the employer, before
administering discipline to an employee, make an effort to
discover whether the employee violated or disobeyed a rule or
order of management? Daugherty felt that an employee has the
right to know, with reasonable precision, the offense with which
he is being charged and must be given an opportunity to defend
his behavior. He noted that the investigation should be made prior
to a disciplinary decision and observed that this is not met by
reliance on the grievance procedure. Where management must
react immediately to the employee's behavior, suspension pending
investigation is generally recognized as acceptable, as long as the
employee is reinstated with full pay for time lost if found innocent.

⁴³ *Res. v. Carrol*, 358 N.C. 649, 669, 599 S.E.2d 888, 898 (2004).

1 (4) Fairness of investigation. Was the employer's investigation
2 conducted fairly and objectively? According to Daugherty, the
3 management official may be both "prosecutor" and "judge," but
4 may not also be a witness against the employee.

5 (5) Sufficiency of proof. At the investigation did the "judge"
6 obtain substantial evidence or proof that the employee was guilty
7 as charged? Daugherty disdained imposing any particular burden
8 of proof, stating instead that the evidence must be truly substantial
9 and not flimsy.

10 (6) Non-discrimination. Has the employer applied its rules, orders,
11 and penalties evenhandedly and without discrimination to all
12 employees? Discriminatory enforcement is the antithesis of just
13 cause. An employee cannot be singled out for discipline based on
14 a rule that is not enforced against any other employees. Daugherty
15 said that prior lax enforcement can be cured by advising all
16 employees of the intent to enforce all rules as written.

17 (7) Appropriateness of penalty. Was the degree of discipline
18 administered by the employer reasonably related to (a) the
19 seriousness of the employee's proven offense and (b) the record of
20 the employee's service? Daugherty explained this criterion as
21 follows: "A trivial proven offense does not merit harsh discipline
22 unless the employee has properly been found guilty of the same or
23 other offenses a number of times in the past."¹⁵ He pointed out,
24 however, that previous offenses may never be used to determine
25 guilt or innocence of the current charge. Rather, the only proper
26 use of an employee's record is in evaluating the severity of
27 discipline for a proven offense.⁴⁴

28 Here, the purported reasons for Ms. Queen's dismissal do not meet these standards. The
alleged actions should not have resulted in discharge (appropriateness of penalty), were not even-
handed (non-discrimination), her discharge was related to personal and anti-union animus
(fairness of investigation), the actions for which she was alleged to have been discharged were
not her mistake alone (sufficiency of proof) and the State provided inadequate training and
guidance (notice).

**(b) Ms. Queen Was Not Provided Adequate Guidance or Training or
Individualized Feedback**

According to Corrine Cosentino, the Human Resources Manager of the Nevada
Department of Veteran's Services at the time of Ms. Queen's discharge, individual feedback is

⁴⁴ ABA/Bloomberg Law, Discipline and Discharge in Arbitration, Chapter 2. Just Cause

1 an important part of a performance evaluation.⁴⁵ Similarly, Poppy Helgren, Former Director of
2 Nursing Services, believes that individualized feedback is important not just during the
3 evaluation, but so that you “develop people to take your place.”⁴⁶ Further, mentorship is “very
4 important.”⁴⁷ Irrespective of management’s *beliefs* of the importance of mentorship and
5 individualized feedback, *Ms. Queen was not adequately trained, mentored, or provided*
6 *individualized feedback.*

7 Corine Watson, Ms. Queen’s direct supervisor and then Interim Director of Nursing
8 Services, admits that Charlene was “provided little guidance in her role as House Supervisor.”⁴⁸
9 Ms. Watson additionally added that she did not have enough time to coach or train her throughout
10 the probationary period, and that Charlene “appreciates the constructive criticism and desires to
11 meet the house supervisor expectations.”⁴⁹ During the arbitration testimony, Ms. Watson once
12 again confirmed that Ms. Queen was provided little guidance.⁵⁰

13 Regardless of Ms. Watson’s assertions that mentorship and individualized feedback are
14 important, Ms. Watson did not live up to these values. In Ms. Helgren’s performance evaluation
15 of Ms. Queen, she provided an entire paragraph of feedback on both the “Rater’s Comments”
16 Section, as well as the “Goals and Objectives” section, mentioning specific classes, training, and
17 management meetings she could attend to further her skills.⁵¹ Ms. Watson, on the other hand,
18 did not provide any “Goals and Objectives” for Ms. Queen, but instead left that section blank
19 and provided the bare minimum advice of “focusing on communication with the scheduler” and
20 “completing assigned state trainings as required.”⁵²

21 Furthermore, Ms. Queen received her first and only “Does Not Meet Expectations” rating
22 on her performance evaluation dated July 12, 2023, *only 19 days prior to her release from*
23

24
25 ⁴⁵ See 12/17/24 Condensed Arbitration Transcript of Charlene Queen, Pages 126. Lines 16-22.

26 ⁴⁶ *Id* at 198, Lines 19-21.

27 ⁴⁷ See *Id* at 198, Lines 24-25.

28 ⁴⁸ See Exhibit 1, Emails, at AFSCME-000064.

⁴⁹ *Id.*

⁵⁰ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 126, Lines 16-22.

⁵¹ See Exhibit 1, Emails, at AFSCME 000144.

⁵² See *Id* at AFSCME-000150.

1 *probation*. This was despite all previous evaluations stating she met expectations. Ms. Queen
2 testified that no individualized coaching document was ever provided to her, and she was only
3 given 2 weeks to fix alleged issues.⁵³ Without having adequate feedback or mentorship, Ms.
4 Queen could not have been dismissed with just cause because she was not provided with
5 adequate *notice* of her responsibilities or how she could improve her performance of them.

6 **(c) Ms. Queen's Performance Evaluations Met Standards Until Two**
7 **Weeks Before Her Discharge**

8 Ms. Queen's initial, 3-month performance evaluation, written by then Director of
9 Nursing Services, Poppy Helgren, provided that Ms. Queen met standards on all categories
10 provided on the State of Nevada Employee Report on Performance. These categories included
11 Quality of Work, Quantity of Work, Work Habits, Relationships With Other Persons, Taking
12 Action Independently, Meeting Work Commitments, Analyzing Situations and Materials, and
13 Supervising the Work of Other Persons.⁵⁴ Ms. Helgren additionally noted that Ms. Queen's
14 dedication was clear, she had an infectious positive attitude, she worked without prompting, and
15 had a "can do attitude" that would serve the Veteran's Home well.⁵⁵

16 In Ms. Queen's second evaluation, conducted at seven months of employment, she
17 continued to be rated at "Meets Expectations" on all categories on the evaluation.⁵⁶ This
18 evaluation, conducted by the then Interim Director of Nursing Services, Ms. Watson,
19 additionally provided that Ms. Queen "manages weekends in the absence of management
20 without incident," is "independent with readmissions" and maintains "effective communication
21 with leadership."⁵⁷ She was reported to be an overall asset to the team.

22 Ms. Queen's final performance evaluation, dated July 15, 2020, a mere 16 days prior to
23 her dismissal, provides that she met standards on all categories except for "Analyzing Situations
24 and Materials." Critically, her overall rating, like the first two evaluations, provided that she *met*

25
26 ⁵³ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 101. Lines 18-19.

27 ⁵⁴ See Exhibit 4, Performance Evaluations, at AFSCME-000144.

28 ⁵⁵ *Id.*

⁵⁶ See *Id.* at AFSCME-000149-150.

⁵⁷ *Id.*

1 *expectations. Under notice and appropriateness of penalty, Ms. Queen's dismissal lacked just*
2 *cause because she was told she was meeting expectations.*

3 **(d) Ms. Queen's Release from Probation Was Motivated By Personal**
4 **Hostility and Retaliation, Which Demonstrate Lack of Just Cause**

5 In addition to having expressed and acted upon anti-union sentiment, as more thoroughly
6 explained below, Ms. Watson, as well as department administration and human resources, had
7 personal hostility towards Ms. Queen, which also motivated her dismissal. According to
8 Stephanie Miller, a drug and alcohol rehabilitation nurse who worked with both Ms. Watson and
9 Ms. Queen, "the way that Corine [Watson] would talk to some people is different than the way
10 she would talk to other people" and that "Charlene might have been called out for something
11 someone else wouldn't have if they did the same thing."⁵⁸ Ms. Miller also relayed that Ms.
12 Watson was "harsher on Charlene."⁵⁹

13 In addition to the personal hostility towards Charlene from Ms. Watson, according to Ms.
14 Helgren, the Former Director of Nursing Services, Ms. Vivian Ruiz, Deputy Director of the
15 Nevada Department of Veteran's Services, had a "target on her [Ms. Queen's] back for a long
16 time."⁶⁰ Ms. Queen ultimately believes that she was discharged in retaliation for her union
17 activity, but personal animus also played a role in her dismissal.⁶¹ Because the state cannot
18 demonstrate that personal animus, retaliatory motive, and anti-union sentiment wasn't a
19 motivating factor in Ms. Queen's release, the State cannot demonstrate just cause for her
20 discharge. This shows a lack of *fairness of investigation* and *non-discrimination*.

21 **(e) Ms. Queen's Timesheet's Error was an Honest Mistake, Without**
22 **Consequence**

23 Ms. Queen's only disciplinary warning prior to her discharge from probation was an Oral
24 Warning concerning how she completed timesheets while on sick leave.⁶² She was sent home
25

26 ⁵⁸ See 12/17/24 Condensed Arbitration Transcript of Charlene Queen, Pages 262. Lines 6-21.

27 ⁵⁹ See Id at Page 263, Lines 1-10.

28 ⁶⁰ See Id at Page 213, Lines 14-18.

⁶¹ See 12/16/24 Condensed Arbitration Transcript at Page 107-108, Lines 20-25, Line 1.

⁶² See Exhibit 2, Personnel File, at AFSCME-000103 – 000105.

1 due to a positive Covid test on November 2, 2022 and returned to work on November 13, 2022.⁶³

2 Ms. Queen was alleged to have:

3
4 [s]ubmitted a timesheet in NEATS for PP11, workweeks of
5 10/31/22 through 11/13/22 without providing an accurate
6 accounting of leave you used during that pay period. At the time
7 of your illness, your sick leave balance was 25.18 hours which
8 would not have covered the 37 hours of absences due to your
Covid-19 positive status. You then disclosed to a team member,
you deliberately submit your PP11 timesheet without accounting
for your leave usage because you did not want to report leave
without pay on your timesheet as you needed the money.⁶⁴

9
10 Ms. Queen did not affirmatively submit that any timesheets whatsoever to the NEATS
11 system.⁶⁵ Instead, used to the “punch in, punch out” timecard system, Ms. Queen simply did not
12 do anything other than report back to work when she had a negative covid test.⁶⁶ Ms. Queen’s
13 supervisor at the time, Ms. Helgren, approved her time, and Ms. Queen did not find out there
14 was anything wrong until Ms. Elizabeth, a payroll specialist, called her in January, 2023.⁶⁷

15 When Ms. Elizabeth called Ms. Queen, Ms. Queen made a flippant comment about the
16 Veteran’s Home needing to fix the mistake.⁶⁸ While it was not a comment Ms. Queen was proud
17 of making, this Oral Warning regarding the time sheets was nothing more than a simple error,
18 and doesn’t demonstrate *just cause*. *The penalty of dismissal is inappropriate for the alleged*
19 *violation*.

20 **(f) Ms. Queen Was Not the Only Party Responsible for Covid Testing**

21 One of the state’s alleged motivating factors in Ms. Queen’s release from probation was
22 related to the admission of a short-term resident who was not tested for Covid upon admission.⁶⁹
23 (“Resident A”). This resident was tested for Covid upon physician’s orders eight days later,
24

25 ⁶³ See Id.

26 ⁶⁴ Id.

27 ⁶⁵ See 12/16/24 Condensed Arbitration Transcript at Page 141, Lines 18-23.

28 ⁶⁶ Id. See Also Id at Page 140, generally.

⁶⁷ Id at Pages 141-142, generally.

⁶⁸ See Id at Page 143.

⁶⁹ See Exhibit 4, Performance Evaluations at AFSCME-000157.

1 which then showed a positive test.⁷⁰ Resident A was then taken to the Covid unit within the
2 home, and ultimately passed away.⁷¹ It is unclear whether this patient developed Covid in the
3 home, or was positive when admitted, as he was admitted on July 11, 2023, and tested positive
4 on July 19, 2023, with Covid having an eight day incubation period.⁷² It is the State's position
5 that theoretically, if this patient had tested positive upon entry, and was then given Pavloxicid, the
6 patient could have had a better outcome.⁷³

7 What is not clear is which individual was ultimately responsible for not testing Resident
8 A at the Veteran's Home. Individuals entering the home at that time would have *already* been
9 tested prior to entering the facility, but it was the facility's policy to conduct another test upon
10 admission.⁷⁴ According to the State, individuals responsible for this test would be the infection
11 control unit, and the House Supervisors, depending on the time of day.⁷⁵

12 However, the State's own Exhibit F, Short-Term Admissions Nursing Procedure,
13 provides that the "House Supervisor, Charge Nurse, and Infection Preventionist will coordinate
14 what room and bed to assign the patient based on the patient's Covid-19 vaccination status."⁷⁶
15 There is an additional "checklist" to be completed, but the document does not provide who is
16 supposed to ultimately be responsible.⁷⁷ Ms. Queen testified that it was the Admissions Nurse
17 who would begin the process, and the Charge Nurse who was ultimately responsible for ensuring
18 the checklist was completed.⁷⁸

19 On the date of Resident A's transfer, the Charge Nurse was an individual named Andrea,
20 who had been mandated to stay later but was in a rush to leave due to a personal obligation.⁷⁹

24 ⁷⁰ *Id.*

25 ⁷¹ *Id.*

26 ⁷² *Id.*

27 ⁷³ *Id.*

28 ⁷⁴ See 12/16/24 Condensed Arbitration Transcript at Page 179, Lines 13-24.

⁷⁵ See *Id.* at Page 227, Lines 5-15.

⁷⁶ See State's Exhibit F, Page 2.

⁷⁷ *Id.* at Short Term Admissions Checklist, Pages 1-2.

⁷⁸ See 12/16/24 Condensed Arbitration Transcript at Page 127, Lines 7-17.

⁷⁹ *Id.* at Page 129, 10-15.

1 The next Charge Nurse was to be an individual named Pat, and Ms. Queen explained to Pat that
2 there was a new short-term admission.⁸⁰ The test ultimately was not conducted by Pat.

3 In addition to the ambiguous and imprecise exhibits provided by the State on short-term
4 admission requirements, Ms. Helgren, former Director of Nursing Services, testified that the
5 communication from administration regrading Covid testing standards was changed often, was
6 difficult to communicate, and caused confusion among staff.⁸¹

7 While it is unfortunate that this individual was never tested for Covid, it is ultimately the
8 responsibility of the Veteran's Home to provide clear guidelines from which individuals
9 responsible for something so critical can easily follow and complete. Ms. Queen's responsibility
10 was shared, and the State provided no evidence that any other individuals involved received any
11 discipline from this incident. Therefore, Queen's dismissal based on this issue is without proper
12 *notice, non-discrimination, fairness of investigation, and sufficiency of proof* under just cause
13 standards.

14 **(g) Ms. Queen Was Not the Only Party Responsible for Patient Follow-**
15 **Ups**

16 Another purported reason for Ms. Queen's discharge from the Veteran's Home related
17 to a "Resident C's" oncology referral which Ms. Queen allegedly did not follow up on. The State
18 does not allege that this resulted in any negative implications for the resident, and added this to
19 Ms. Queen's performance review after having already made the decision to discharge her.⁸² This
20 error occurred on November 1, 2022, and was "discovered" on July 25, 2023, 8 months later, *the*
21 *very day after Ms. Queen's participation in delivering the union petition to Administrator Fred*
22 *Wagar.*⁸³ Poppy Helgren, former Director of Nursing Services, found that this 'discovery' was
23 "irregular," "highly alarming" and "maybe targeting."⁸⁴

24
25
26 ⁸⁰ Id at Page 131, *generally*.

27 ⁸¹ See 12/17/24 Condensed Arbitration Transcript at Pages 193-194, Lines 16-25, Lines 1-7.

28 ⁸² See Exhibit 4, Performance Evaluations at AFSCME-000159; See Also Exhibit 1, Emails, at AFSCME-000064.

⁸³ See Id.

⁸⁴ See 12/17/24 Condensed Arbitration Transcript at Pages 211-212, *generally*.

1 Irrespective of the highly irregular placement of this 8-month-old incident into Ms.
2 Queen's file, Ms. Queen was not the only individual who would have 'missed' this follow-up,
3 as the night shift house supervisor would have also had the responsibility to follow-up on the
4 oncology appointment.⁸⁵ When asked if this individual also received discipline, or a mention in
5 their performance evaluation, as was done to Ms. Queen, Ms. Watson responded "*Counselor,*
6 *that's inappropriate.*"⁸⁶ The refusal to respond is quite telling.

7 Due to the highly irregular nature of the 'discovery' of this incident, the shared
8 responsibility of following up with the subject oncologist, and the lack of negative patient
9 outcome, this incident would not provide just cause for Ms. Queen's release from probation.
10 Here, there is a lack of *Notice, non-discrimination, fairness of investigation, and sufficiency of*
11 *proof* for a just cause showing.

12 **(h) The Veteran's Home Admissions Policy Was Unclear, Disorganized,**
13 **and When Ms. Queen Sought Clarification, She Was Rebuked**

14 A final purported reason for Ms. Queen's release from probation related to "Resident B,"
15 a short-term resident who arrived at the home on July 19, 2023 "as a full code with a prognosis
16 of a few days to live and no access for nutrition or medications, putting the home at risk for
17 liability."⁸⁷ He was sent back to the hospital at 11:00 PM, and returned on July 20, 2023 via
18 ambulance.⁸⁸ The state alleges that the re-admission on July 20, 2023, was due to Charlene not
19 receiving a discharge summary prior to coordinating transport of the resident.⁸⁹ The State alleges
20 that this put the home at a liability risk.⁹⁰

21 Ms. Queen, however, *did receive the discharge summary from the subject hospital.*⁹¹ She
22 had heard conflicting information from the discharge summary on the phone, which is why she
23 tried to clarify the status of the patient's feeding tube with Ms. Watson.⁹² Ms. Watson ignored

24
25 ⁸⁵ See 12/17/24 Condensed Arbitration Transcript at Page 25, Lines 8-19.

26 ⁸⁶ Id at Lines 21-24.

27 ⁸⁷ See Exhibit 4, Performance Evaluations at AFSCME-000157.

28 ⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id at AFSCME-000158.

⁹¹ See 12/16/24 Condensed Arbitration Transcript at Pages 50-51, Lines 24-25, Lines 1-25

⁹² Id.

1 Ms. Queen's inquiry as to the status of this patient.⁹³ When Ms. Queen returned an hour later to
2 Ms. Watson's office to inquire again, Ms. Watson stated that "she would call her when she was
3 ready to talk to her."⁹⁴ Ms. Queen then attempted to speak to Steve Pavlow, the administrator
4 about this patient, which angered Ms. Watson, who told Ms. Queen "I am the nurse in charge,
5 you speak to me, why did you speak to Steve?"⁹⁵ Thereafter, Ms. Watson interrogated Ms. Queen
6 about her union activity, of which will be discussed in greater detail below.⁹⁶

7 While it is unfortunate that this patient experienced any hardship as a result of this mix-
8 up, Ms. Queen was clearly and emphatically trying to ensure the patient's best interests, while
9 dealing with a supervisor who was more concerned with Ms. Queen 'going over her head' to Mr.
10 Pavlow. This incident did not provide just cause for the release from probation of Ms. Queen as
11 it violated *Notice, Investigation Prior to Discipline, Rule Reasonably Related to Operation*, and
12 *Fairness of Investigation*.

13 **(i) Ms. Queen Was an Exemplary Employee**

14 The State furnished a witness who claimed that Ms. Queen left a medication cart
15 unsupervised, without having witnessed said act, and without having identified the key to the
16 subject cart.⁹⁷ The State additionally furnished a witness who claimed that Ms. Watson would
17 'disappear' into her office but could not remember whether she actually called Ms. Queen's
18 house supervisor phone when she was looking for her.⁹⁸

19 The Union, on the other hand, provided witness testimony which demonstrates that Ms.
20 Queen's performance was exemplary. Indiana Lawrence, a CNA⁹⁹, testified that Ms. Queen was
21 always asking the CNAs if they needed help, would instruct them that she could take over if they
22 needed a break, and was a very nice coworker.¹⁰⁰ Ms. Sandra Patrino, a fellow CNA (and Ms.
23

24
25 ⁹³ *Id.*

26 ⁹⁴ See 12/16/24 Condensed Arbitration Transcript at Page 53, Lines 10-20.

27 ⁹⁵ See 12/16/24 Condensed Arbitration Transcript at Page 105-106, Lines 18-25, Lines 1-18.

28 ⁹⁶ *Id.* at Page 106-107, Lines 23-25, Lines 1-2.

⁹⁷ See 12/17/24 Condensed Arbitration Transcript at Page 186-189, generally.

⁹⁸ *Id.* at Pages 176 – 179, generally.

⁹⁹ As House Supervisor, Ms. Queen supervised various CNAs.

¹⁰⁰ *Id.* at Page 163, Lines 13-18.

1 Lawrence's sister), testified that Ms. Queen was "always welcome and helping to us when we
2 tell her we need help on the floor as CNA, and for me is excellent person and good coworker."¹⁰¹

3 Tammy Terifaj, another CNA, testified that Ms. Queen was "trying to help us CNAs out."¹⁰²

4 The testimony demonstrating Ms. Queen's exemplary behavior was not limited to CNAs.
5 Michelle Ashton, a licensed practical nurse who acted as a charge nurse and ran the med cart,
6 stated that "anytime I needed assistance, she was there for me."¹⁰³ Ms. Ashton also testified that
7 that Ms. Queen would answer her phone, and was not the type to hide in her office, but rather
8 was "bouncing from unit to unit."¹⁰⁴ Stephanie Miller, a restorative nurse manager contracted by
9 the home, testified that Ms. Queen was thorough, would follow up if there were any questions
10 or concerns, was proactive, and was easy to reach.¹⁰⁵

11 Looking at the totality of the circumstances, Ms. Queen was a proactive employee who
12 looked out for her subordinates, was thorough in her work, and cared deeply about her patients.
13 While she has made a mistake here or there, as all employees do, none of these mistakes,
14 cumulatively, provide just cause for dismissal when looking at the various factors.

15 Instead, Ms. Queen's release from probation was motivated by *other* inappropriate
16 factors.

17 IV.

18 LEGAL ARGUMENT

19 MS QUEEN'S RELEASE FROM PROBATION WAS MOTIVATED BY ANTI- 20 UNION ANIMUS

21 A. Legal Standards

22 The Collective Bargaining Agreement provides protection against retaliation or
23 discrimination based on union activity:

24 Article 2. Non-Discrimination

25
26 ¹⁰¹ *Id* at Page 168, Lines 8-12.

27 ¹⁰² *Id* at Page 234, Lines 14-18.

¹⁰³ *Id* at 239, Lines 15-20.

28 ¹⁰⁴ *Id* at 239-240, Lines 21-25, Lines 1-7.

¹⁰⁵ *Id* at Page 259-260, generally.

1 Under this Agreement, neither party will discriminate against
2 employees on the basis of:

3 religion; age; sex; status as a breastfeeding mother; marital status;
4 race; color; creed; national origin; political affiliation; military
5 status; status as a veteran; sexual orientation; gender expression;
6 gender identity; clothing or traits historically associated with
7 national origin, gender, race, color, or religion, including, but not
8 limited to, hair texture, hair style, or headwear; familial status; any
9 real or perceived sensory, mental, or physical disability; genetic
10 information; status as a victim of domestic violence, sexual
11 assault, or stalking; **because of the participation or lack of
12 participation in Union activities or affiliation**, or any other
13 characteristic protected by applicable law.

14 Bona fide occupational qualifications based upon the above traits
15 do not constitute a violation of this Article. Employees who feel
16 they have been the subject of discrimination may file a complaint
17 using the procedure outlined in Article 18, Unlawful
18 Discrimination.

19 With respect to the terms and conditions of employment, the
20 parties shall not discriminate against any employee covered by this
21 Agreement. Grievances filed under this Article shall specify in
22 writing the non-merit factor(s) upon which the alleged
23 discrimination has been based and the manner in which the alleged
24 discrimination occurred. (*Emphasis Added*)¹⁰⁶

25 In labor arbitrations, provisions like these have repeatedly been cited when an employee
26 has been discharged due to their union activity.¹⁰⁷ Arbitrators have also found that anti-union
27 sentiment "is not conducive to proper observation of a collective bargaining contract."¹⁰⁸

28 When the NLRB prosecutes federal unfair labor practices, it follows the standard in
Wright Line and must prove: "that the employee's protected conduct was a substantial *or*
motivating factor in the adverse action." ... If, and only if, the General Counsel meets that
burden, the burden shifts to the employer to exonerate itself by showing that it would have taken
the same action for a legitimate, nondiscriminatory reason regardless of the employee's protected
activity."¹⁰⁹ (*Emphasis Added.*) To prove that the conduct was a substantial or motivating factor

¹⁰⁶ See Exhibit 9, Subject Collective Bargaining Agreement at Page 1, Article 2.

¹⁰⁷ See *Labor Arbitration Decision, THUNDERBIRD INN*, 77 BNA LA 849, (Grievant's job restored after arbitrator found anti-union sentiment after Supervisor told grievant "If you went to the union, I would be mad.")

¹⁰⁸ See *Labor Arbitration Decision, HUNTER FAN & VENTILATING CO., INC.*, 47A-446, 8 BNA LA 911.

¹⁰⁹ *Nichols Aluminum, LLC v. NLRB*, 797 F.3d 548, 554 (8th Cir. 2015) (Internal Citations Omitted.)

1 in the employee's discharge, the Board is 'permitted to draw reasonable inferences' but 'cannot
2 rely on 'suspicion, implications, or plainly incredible evidence.'¹¹⁰

3 In this case, there is more than enough credible evidence to create a reasonable inference
4 that Ms. Queen was discharged for her union activity. There is clear evidence of anti-union
5 sentiment among the Veteran's Home administration, blatant interference with union activity,
6 irregular performance evaluations, and the lack of discharge or adverse actions taken against
7 employees who performed similarly.

8 **B. The State's Conduct Demonstrates a Hostility Towards Union Activity,**
9 **Which Influenced It's Decision to Release Ms. Queen From Probation**

10 1. Testimony at the Arbitration Provides Anti-Union Sentiment Was Present Among
11 Veteran's Home Management

12 Arbitration testimony provides that there was a culture of hostility towards AFSCME
13 Local 4041 and unions generally. This sentiment started from the very top, with then
14 Administrator of the home, Steve Pavlow, holding anti-union views and making these views
15 known to the workers. The following is an excerpt of cross-examination testimony from Sandra
16 Patrino, a Certified Nursing Assistant ("CNA") at the home.

17 **CROSS-EXAMINATION**

18 6. BY MR. SORENSEN:

19 7. Q: I just have one question.

20 8: Did Steve Pavlow tell you that he didn't

21 9: like the union?

22 10. A: Yes.

23 11. Q: He did?

24 12. A: He say, "I don't believe in them" and "I

25 13: don't care about the union."

26 14. Q: He told you that directly?

27 15. A: That's what I said, Yes.

28 16. Mr. Sorenson: Okay, No more questions.¹¹¹

29 This attitude was not limited to Administrator Pavlow. but was also present in Ms.
30 Queen's Supervisor, then Interim Director of Nursing Services, Corrine Watson.

¹¹⁰ *Strategic Technology Institute v. NLRB*, Docket No. 22-02958 (8th Cir. Sep 15, 2022), Court Docket (Quoting
Mead & Mount Constr. Co. v. NLRB, 411 F.2d 1154, 1157 (8th Cir. 1969).

¹¹¹ See December 17, 2024 Condensed Arbitration Transcript, Page 172, Lines 7-16.

1 2. Ms. Queen's Supervisor, Corrine Watson, Interfered With Ms. Queen's Rights as
2 a Union Member

3 As discussed at length during the Arbitration, the Veteran's Home had a number of
4 difficulties maintaining adequate nurse¹¹² staffing levels while ensuring that nurses had enough
5 rest time. For this reason, the home implemented a 'mandating' system, wherein workers would
6 be required to come in for an additional 4-hour shift after completing their 12-hour shift. Later,
7 this policy would be changed to have nurses work 8-hour shifts, with an additional 8-hour shift
8 "mandated" on the same day when staffing levels so required. This would ultimately result in
9 nurses working for 16 hours, often without prior notice. The below exchange in the arbitration
10 testimony demonstrates this:

11 Q: Okay. So, she'd also be working 10:00 p.m. to 6:30 a.m.?

12 A: Yes.

13 **Q: Okay. So, in total, this individual would have worked
14 from 2:00 p.m. until 6:30 a.m.; is that correct?**

15 A: Yes.

16 Q: Okay. And so that would be working 16 1/2 hours straight; is
17 that correct?

18 A: Yes. And there's another individual in here that actually
19 worked many more double shifts.

20 Q: Okay. Can you point that out to me?

21 A: So, on Wednesday, 5-24, there's Carolyn Wolf at the 2:00 to
22 10:30. She picked up overtime.

23 Q: Okay.

24 A: And then she had her regular schedule of 10:00 to 6:30 that
25 same day.

26 **Q: So the same thing: She would have been working from
27 2:00 p.m. to 6:30 a.m.; is that correct?**

28 A: Yes.¹¹³¹¹⁴

29 The haphazard nature of this "mandating" resulted in negative effects on the nurses and
30 was not in the best interests of patient safety. This included nurse exhaustion and sleep
31 deprivation which caused safety concerns,¹¹⁵ severe inflammation in nurses serving 16-hour

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112 "Nurse" referring to Licensed Practical Nurses ("LPNs"), Certified Nursing Assistants ("CNAs") as well as
113 Registered Nurses ("RNs").

114 See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 26-27. Lines 12-25, Lines 1-16.

115 See Also Exhibit 7, May & June 2023 Scheduling.

See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 28. Lines 22-25.

1 shifts,¹¹⁶ missed doctor's appointment,¹¹⁷ lost scholarships,¹¹⁸ and missed time with family.
2 When the nurses worked the 12-hour shifts with a possible 4-hour mandating, they already knew
3 that on that particular day they would be unable to take on other tasks and would instead schedule
4 doctor's appointments and other personal matters on days they had entirely off. This meant that
5 the 12-hour shifts allowed more flexibility in planning their lives.¹¹⁹

6 It was for this reason that Ms. Queen began assisting in the drafting and circulation of a
7 petition to get a meeting of the nurses and management to come up with a better solution.¹²⁰ The
8 first attempt at this petition resulted in confusion based on imprecise language, and Ms. Queen
9 assisted in drafting and circulating this second petition.¹²¹

10 At roughly 9:00 AM on July 18, 2023, after assisting the union in the circulation of this
11 second petition, Ms. Queen went to see her supervisor, Ms. Watson, to clarify what kind of care
12 a re-admitted patient, coming in from Nathan Adelson hospice needed.¹²² When Ms. Queen
13 attempted to speak to Ms. Watson about the issue, Ms. Watson stated that "I need space and
14 cannot talk to you right now."¹²³ As this patient's re-admission was a priority and his family was
15 calling, Ms. Queen tried to speak with Ms. Watson about this issue again at 10:30 AM.¹²⁴ Ms.
16 Queen tried opening Ms. Watson's door to speak with her, and Ms. Watson sternly yelled "I told
17 you I would call you when I was ready to talk to you."¹²⁵

18 After Ms. Queen's second attempt to discuss this patient's care with Ms. Watson, Ms.
19 Queen then walked to the nearby administrator's office to discuss another issue, and additionally
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22 ¹¹⁶ See December 17, 2024 Condensed Arbitration Transcript, Page 232, Lines 14-19.

23 ¹¹⁷ See Id at Page 231, Lines 10-21.

24 ¹¹⁸ See Id at Page 161, Lines 14-17.

25 ¹¹⁹ See Id at Page 248, Lines 11-18.

26 ¹²⁰ Petitions regarding working conditions which have the "welfare of others in mind" and have "some relation to
group action in the interest of the employees" are concerted activity. See *NLRB v. Mount Desert Island Hosp.*, 695
F.2d 634, 640 (1st Cir. 1982).

27 ¹²¹ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Page 75, Lines 13-18.

28 ¹²² See Id at Page 48, Lines 4-15, See Also Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-
000194.

¹²³ See Id.

¹²⁴ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Page 49, Lines 4-25; See Also Exhibit 6,
Charlene Queen Contemporaneous Statements, at AFSCME-000194.

¹²⁵ See Id at Page 49-50, Lines 21-25, Lines 1-4; See Also Exhibit 6, Id.

1 inquired about the re-admitted patient to Steve Pavlow, the Administrator. Mr. Pavlow stated
2 that he needed to talk about this patient with Ms. Watson as well.¹²⁶ When Ms. Queen was
3 overseeing lunch/town hall 30 minutes later, Ms. Watson called Ms. Queen, admonished her for
4 speaking to the administrator regarding the issue, and demanded she go to her office.¹²⁷

5 When Ms. Queen arrived at Ms. Watson's office, after discussing a few other matters,
6 Ms. Watson sked, "Did you ask Nathan or have Nathan sign this petition going around?"¹²⁸ Ms.
7 Queen relayed that the day prior, she had been explaining the intent of the petition to some staff
8 that had questions.¹²⁹ Ms. Watson then stated: "*It has nothing to do with you. You are the house*
9 *supervisor. You shouldn't even be a part of this. You are part of the manager's meetings. This is*
10 *a conflict.*"¹³⁰

11 Ms. Queen then explained that she was a union member, and her status of house
12 supervisor was the same as the other Charge Nurses in the bargaining unit.¹³¹ Ms. Watson then
13 incorrectly stated¹³² that 12-hour shifts were not in the CBA, and that Ms. Queen needed to "have
14 more of your facts known before getting involved."¹³³ When asked at the arbitration whether she
15 felt like her rights as a union member were violated, Ms. Queen responded that she did.¹³⁴

16 Here, by stating that Ms. Queen should not be involved in this petition, making false
17 statements about her status as a union member under the CBA, and making false statements on
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21 ¹²⁶ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Page 54, Lines 15-21; *See Also* Exhibit 6,
22 Charlene Queen Contemporaneous Statements, at AFSCME-000194.

23 ¹²⁷ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Page 55, Lines 2-13; *See Also* Exhibit 6,
24 Charlene Queen Contemporaneous Statements, at AFSCME-000194.

25 ¹²⁸ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 60-61, Lines 22-25; Line 1; *See Also*
26 Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000195.

27 ¹²⁹ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 62-63,, Lines 10-25; Lines 1-8; *See*
28 *Also* Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000195.

¹³⁰ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Pages 64-65,, Lines 22-25; Lines 1-2; *See*
Also Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000195-196.

¹³¹ See Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000196; *See Also* Exhibit 6,
Collective Bargaining Agreement at AFSCME-000461-462.

¹³² 12-hour shifts are contemplated in the CBA. *See* Exhibit 6, Collective Bargaining Agreement at AFSCME-
000382.

¹³³ *See* Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000196.

¹³⁴ See 12/16/24 Condensed Arbitration Transcript of Charlene Queen, Page 67, Lines 17-19.

1 the nature of what the CBA provides, Ms. Watson was interfering with and coercing Ms. Queen's
2 union activity and discriminating based on Ms. Queen's union activity.

3 3. Ms. Queen's Discharge Runs Parallel With Her Union Activity

4 Ms. Queen first joined the union on March 7, 2023.¹³⁵ She decided to get more involved
5 in the union on June 16, 2023 after a number of issues she was experiencing.¹³⁶ These issues
6 included being denied personal time for June 27-28, 2023, being told to 'find her own coverage'
7 for an already approved July 2-8, 2023 vacation, and having a feeling that she was treated
8 unfairly by her scheduler, Yolanda, who was seemingly giving scheduling preferences to friends
9 while other nurses worked 16 hour days.¹³⁷ The union rep to the Veteran's Home, Blanca, then
10 called Ms. Queen back on Monday, June 19, 2023.¹³⁸ Ms. Queen called Blanca back on
11 Thursday, June 19, 2023, and relayed the above concerns regarding the unstable staffing situation
12 and favoritism.¹³⁹

13 Twenty-three days after meeting with the Union rep regarding the staffing issues, on July
14 12, 2023, Ms. Queen had her 11-month evaluation. This evaluation, written by Ms. Watson,
15 marked Ms. Queen for the first time as "Does Not Meet Standards" on *Analyzing Situations and*
16 *Materials*, stating that "Charlene is reluctant to mandating staff to ensure that the neighborhoods
17 are staffed safely and has allowed staff to refuse and go home without fully analyzing the full
18 effect on safe staffing numbers."¹⁴⁰ Ms. Queen believed that at this time, Ms. Watson was already
19 laying the groundwork to terminate her.¹⁴¹

20 The day after this performance review, on July 13, 2023, Ms. Queen met with Blanca
21 from AFSCME again, where they agreed to create the petition to meet with management to
22 rectify the unsafe mandation protocol.¹⁴² Six days later, on July 19, 2023, Ms. Watson
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25 ¹³⁵ See Exhibit 6, Charlene Queen Contemporaneous Statements at AFSCME-000181

26 ¹³⁶ *Id.* at 000186.

27 ¹³⁷ *Id.* at 000186-188.

28 ¹³⁸ *Id.* at 000188.

¹³⁹ *Id.*

¹⁴⁰ See Exhibit 4, Performance Evaluations, at AFSCME-000156.

¹⁴¹ See Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000190.

¹⁴² *Id.*

1 admonished Ms. Queen for her union activities by telling her that “you are the house supervisor,
2 you shouldn’t even be part of this.”¹⁴³ Five days later, on July 24, 2023, Ms. Queen, along with
3 other union members and AFSCME Organizer Jason Hursey, delivered the above-referenced
4 petition to Department of Veteran’s Affairs Director Fred Wagar.¹⁴⁴¹⁴⁵

5 *On the very next day, July 25, 2023,* Ms. Watson emailed Blanche Dieket, Human
6 Resources Officer for the Nevada Department of Veteran’s Services, asking “What is the status
7 of this release.”¹⁴⁶ The basis of this recommendation from Ms. Watson was Ms. Queen’s alleged
8 lack of follow up in a patient’s chart *which occurred 9 months prior.*¹⁴⁷ Former Director of
9 Nursing Services, Poppy Helgren, found the fact that this information was identified 9 months
10 after the fact “alarming.”¹⁴⁸

11 Here, it is more than a *reasonable inference* that Ms. Queen’s release from probation was
12 motivated by anti-union sentiment when it was decided she would be terminated *less than 24*
13 *hours after engaging in protected activity.*¹⁴⁹ Further, this same date of determination of release
14 was only *6 days* after Ms. Queen corrected Ms. Watson’s contentions that she “shouldn’t be a
15 part of” union activity.¹⁵⁰

16 4. Individuals Who Made Similar Mistakes to Ms. Queen Were Not Terminated,
17 Showing that the Veteran’s Home Would Not Have Taken The Same Action
18 Against Someone Who Was Not a Vocal Union Supporter

19 As stated above, when a union makes a showing that an adverse action was related to
20 anti-union animus, the employer must demonstrate that “it would have taken the same action for
21 a legitimate, nondiscriminatory reason regardless of the employee’s protected activity.”¹⁵¹ In this

22 ¹⁴³ *Id* at AFSCME-000196.

23 ¹⁴⁴ *See* Exhibit 10, *Video of Delivery of Union Petition.*

24 ¹⁴⁵ If you recall, at the time of the arbitration we could not place the exact date of the delivery of the petition. I
25 have since been able to locate it’s date via the “inspector” function of QuickTime Player which shows that the
petition delivery was on July 24, 2023.

26 ¹⁴⁶ *See* Exhibit 1, Emails, at AFSCME-000066.

27 ¹⁴⁷ *See Id.*

28 ¹⁴⁸ *See* 12/17/24 Condensed Arbitration Transcript of Charlene Queen, Page 49, Lines 4-25; *See Also* Exhibit 6,
Charlene Queen Contemporaneous Statements, at Page 211, Lines 19-20.

¹⁴⁹ *Strategic Technology Institute v. NLRB*, Docket No. 22-02958 (8th Cir. Sep 15, 2022), Court Docket (Quoting
Mead & Mount Constr. Co. v. NLRB, 411 F.2d 1154, 1157 (8th Cir. 1969).

¹⁵⁰ *See* Exhibit 6, Charlene Queen Contemporaneous Statements, at AFSCME-000196.

¹⁵¹ *Nichols Aluminum, LLC v. NLRB*, 797 F.3d 548, 554 (8th Cir. 2015) (Internal Citations Omitted.)

1 case, the Veteran's Home did not discharge or otherwise discipline other employees whose
2 conduct was the same or substantially similar to that of Ms. Queen.

3 One of the reasons for Ms. Queen's release from probation was an alleged failure to
4 administer a short-term resident a COVID-19 test.¹⁵² As discussed above, while this incident
5 cannot be blamed solely on Ms. Queen, it is useful to look at the Veteran's Homes' track record
6 with Covid prior to this incident.

7 Before Ms. Watson was the Interim Director of Nursing Services, and Director of
8 Nursing Services, she was the Infection Prevention and Control Nurse Manager.¹⁵³ During
9 November of 2022, when Ms. Watson was still the Infection Control Manager, at or around three
10 separate residents died from COVID.¹⁵⁴ This ultimately resulted in a meeting among
11 management wherein Administrator Fred Wagar stated "*You killed those people due to the*
12 *testing. The lack of testing.*"¹⁵⁵ As the head of infection control at the time of these deaths, Ms.
13 Watson was not discharged, and did not face adverse action. Instead, Ms. Watson was later made
14 the Interim Director of Nursing, and ultimately the Director of Nursing.

15 By dismissing Ms. Queen from probation for an alleged failure to test but promoting an
16 infection manager who oversaw three COVID patient deaths in a short period of time
17 demonstrates that the Veteran's Home would not "have taken the same action for a legitimate,
18 nondiscriminatory reason regardless of the employee's protected activity."¹⁵⁶

19 Ultimately, the record demonstrates that Ms. Queen was discriminated against for her
20 union activities and for rights as a union member were interfered with due to Ms. Watson's
21 questioning. The timeline provides a nearly immediate discharge after her protected union
22 activity, and the Veteran's Home did not discharge Ms. Watson after overseeing three patient
23 Covid deaths in a short period of time as the head of Infection Control. This demonstrates anti-

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26 ¹⁵² See Exhibit 4, Performance Evaluations, at AFSCME-000157.

27 ¹⁵³ See Exhibit 3, Emails at AFSCME-000022.

28 ¹⁵⁴ See 12/17/24 Condensed Arbitration Transcript of Charlene Queen, Page 49, Lines 4-25; See Also Exhibit 6, Charlene Queen Contemporaneous Statements, at Page 194-195, Lines 9-25, Lines 1-7.

¹⁵⁵ See Id.

¹⁵⁶ *Nichols Aluminum, LLC v. NLRB*, 797 F.3d 548, 554 (8th Cir. 2015) (Internal Citations Omitted.)

1 union discrimination in violation of the Collective Bargaining Agreement, which the State
2 cannot rebut.

3 V.

4 CONCLUSION

5 For the foregoing reasons AFSCME Local 4041 respectfully requests the arbitrator find:

- 6 1. The Standard for Ms. Queen's Release From Probation is Just Cause;
- 7 2. That the State of Nevada Did Not Demonstrate that Ms. Queen's Release From Probation
- 8 Met Just Cause;
- 9 3. That Ms. Queen was Released from Probation Based on Discrimination for Union
- 10 Activities in Violation of the CBA;
- 11 4. That Ms. Queen be immediately reinstated and made whole; and
- 12 5. That the Arbitrator maintain jurisdiction pending the implementation of the above
- 13 remedies.

14

15 DATED this 25th day of March, 2025

16 REESE RING VELTO, PLLC

17 /s/ Bradley C.W. Combs

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VI.

TABLE OF EXHIBITS

- 1. Emails (Bates 000001 – 000072)**
- 2. Personnel File (Bates 000073 - 000108)**
- 3. Policies and Procedures (Bates 000110 – 000143)**
- 4. Performance Evaluations (Bates 000144 – 000160)**
- 5. Notes RE Scheduling: (Bates 000161 – 000178)**
- 6. Queens Statements: (Bates 000179 – 000206)**
- 7. May & June 2023 Scheduling (Bates 000207 – 000314)**
- 8. Letter of Instruction (Bates 000315)**
- 9. Collective Bargaining Agreement (Bates 000354 – 000472)**
- 10. 7.24.23 Video of Delivery of Union Petition.**

AFSCME Local 4041 (Complainant)

Notice of Non-Opposition to
Motion to Defer cases 2023-019 and 2023-029

FILED
June 26, 2025
State of Nevada
E.M.R.B.
12:01 p.m.

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Before the State of Nevada

Government Employee-Management

Relations Board

AFSCME LOCAL 4041,

Complainant,

v.

STATE OF NEVADA, DEPARTMENT
OF VETERANS SERVICES,
NEVADA STATE VETERAN'S HOME

Respondent.

CASE NO.: 2023-019 (CONSOLIDATED
WITH 2023-029)

**NOTICE OF NON-OPPOSITION TO
MOTION TO DEFER CASES 2023-019
AND 2023-029**

On June 22, 2025, Counsel for State of Nevada filed a Motion to Defer Cases 2023-019 and 2023-029. Complainant AFSCME Local 4041, by and through their counsel of record Nathan R. Ring, Esq. and Bradley C.W. Combs, Esq. does not oppose this motion and hereby submits their Notice of Non-Opposition.

Date: June 26, 2025.

Respectfully submitted,

/s/ Bradley Combs

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 26, 2025, I have served via electronic mail, as required by NAC
3 288.070(d)(3), a true and correct copy of **NOTICE OF NON-OPPOSITION TO MOTION**
4 **TO DEFER CASES 2023-019 AND 2023-029** as addressed below. I also have filed the document
5 with the Nevada Government Employee-Management Relations Board via its email address at
6 emrb@business.nv.gov:

7 Steven O. Sorensen, Deputy Attorney General
8 STATE OF NEVADA, ATTORNEY GENERAL'S OFFICE,
9 LABOR RELATIONS UNIT
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10
11 */s/ Michelle Wade*
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