

FILED

JAN 22 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

Case No. 2019-019

PETITION TO BE DESIGNATED AS THE
EXCLUSIVE REPRESENTATIVE OF A
BARGAINING UNIT PURSUANT TO
SENATE BILL 135 OF THE 80TH SESSION OF
THE NEVADA LEGISLATURE

NOTICE OF ENTRY OF ORDER

ITEM NO. 858

TO: Peter Long, Interim Director of the Department of Administration, and Frank Richardson, Interim Administrator of the Division of Human Resource Management, for the State of Nevada;

TO: Harry Schiffman, President, American Federation of State, County and Municipal Employees, Local 4041, and Fernando R. Colon, Associate General Counsel, AFSCME Office of the General Counsel;


PLEASE TAKE NOTICE that the **ORDER REGARDING THE DESIGNATION OF AN EXCLUSIVE REPRESENTATIVE FOR BARGAINING UNIT I** was entered in the above-entitled matter on January 22, 2020.

A copy of said order is attached hereto.

DATED this 22nd day of January 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management
3 Relations Board, and that on the 22nd day of January 2020, I served a copy of the foregoing
4 **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

5 Peter Long
6 Interim Director of Administration
7 State of Nevada
8 515 East Musser Street, Third Floor
9 Carson City, Nevada 89701-4298

9 Frank Richardson
10 Interim Administrator of the Division of Human Resource Management
11 State of Nevada
12 Blasdel Building
13 209 East Musser Street, Suite 101
14 Carson City, Nevada 89701-4204

13 Harry Schiffman
14 President
15 AFSCME, Local 4041
16 601 S. Rancho, Suite C24
17 Las Vegas, NV 89106

17 Fernando R. Colon
18 Associate General Counsel
19 AFSCME Office of the General Counsel
20 1101 17th Street NW, Suite 900
21 Washington, D.C. 20036

21 
22 _____
23 **MARISU ROMUALDEZ ABELLAR**
24 Executive Assistant
25
26
27
28

FILED

JAN 22 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

IN RE:

PETITION TO BE DESIGNATED AS THE
EXCLUSIVE REPRESENTATIVE OF A
BARGAINING UNIT PURSUANT TO
SENATE BILL 135 OF THE 80TH SESSION
OF THE NEVADA LEGISLATURE

CASE NO. 2019-021

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

ITEM NO. 858

On January 14, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board (“Board”) for consideration and decision pursuant to the provisions of the Government Employee-Management Relations Act (the “Act”); NAC Chapter 288; and NRS Chapter 233B.

At issue was a petition filed on August 23, 2019 by the American Federation of State, County and Municipal Employees, Local 4041 (“AFSCME”), seeking to be designated as the exclusive representative for Bargaining Unit I, which consists of Category III Peace Officers. On October 30, 2019, staff issued its audit report on the petition and its supporting information. This audit report was presented to the Board at its December 17, 2019 meeting. The State of Nevada (“State”) provided no response to the petition.¹

¹ At the Board meeting of December 17, 2019, Peter Long, Interim Director of the Department of Administration, remarked that the State would not be responding to any of the petitions for recognition as it was the State’s position that it is solely the purview of the Board to make such decisions.

1 **Standard for Designation of an Exclusive Representative**

2 NRS 288.520 provides a means for the Board to designate a labor organization as the
3 exclusive representative of a bargaining unit without an election. NRS 288.520 reads:

4 If no labor organization is designated as the exclusive representative of a
5 bargaining unit and a labor organization files with the Board a list of its
6 membership or other evidence showing that the labor organization has been
7 authorized to serve as a representative by more than 50 percent of the employees
8 within the bargaining unit, the Board shall designate the labor organization as the
9 exclusive representative of the bargaining unit without ordering an election.

10 Thus, the issue at hand is whether the petition and supporting information show that
11 AFSCME has been authorized to serve as a representative by more than 50 percent of the
12 employees within Bargaining Unit I. Based upon the wording of NRS 288.520, the burden of
13 proof is on the petitioner. To determine whether this burden has been met requires a two-step
14 process. The first step is to determine the size of the bargaining unit. The second step is then to
15 determine the percentage of support for the petitioner.

16 **Step 1: Determination of the Size of the Bargaining Unit**

17 As detailed in the audit report, staff obtained from the State a spreadsheet of all classified
18 employees who were employed by the State as of August 31, 2019.² Based on the report, the
19 bargaining unit had a total of 1,769 employees as detailed in Table 1.

20 **Table 1: Number of Employees in Unit I By Job Title**

Title Code	Job Title	Count
13.312	Sr. Correctional Officer	176
13.313	Correctional Officer	1,180
13.314	Correctional Officer Trainee	237
13.322	Forensic Specialist 3	41
13.323	Forensic Specialist 2	23
13.324	Forensic Specialist 1	27
13.311	Correctional Sergeant	85
	Total	1,769

26
27 ² The date of reports from the State will not always match the date petitions are received by the
28 EMRB as such reports from the State are produced at the end of each calendar month. The
EMRB attempts to use the reports that best match the date of the petition.

1 **Step 2: Determination of the Percentage of Support for the Petitioner**

2 As detailed in the audit report and the addendum to the audit report, staff was able to
3 determine that the petitioner has evidence of support of 934 employees, equaling 52.8%, which
4 is detailed below.

5 First, it should be noted that the State, for many years, has allowed employees to have
6 dues deducted from their paychecks and to have those deductions forwarded to the labor
7 organization(s) of their choice. In this regard, staff found 517 instances in which AFSCME listed
8 an employee on its membership list, which was provided as an exhibit to the petition, and the
9 same employee was also listed on a dues list as provided by the State.

10 AFSCME also provided an authorization card list and authorization cards for those
11 employees who indicated they authorize AFSCME to be their bargaining agent but who were not
12 yet members of the organization. In this regard, staff found 297 instances in which AFSCME
13 listed the employee on its authorization card list, which was provided as an exhibit to the
14 petition, and for which it also subsequently produced an authorization card with a signature and a
15 date that was within one year of the filing of the petition for recognition.³ The authorization card
16 is accepted by the Board as being a valid authorization card as it authorizes AFSCME to
17 represent an employee as the exclusive representative and to bargain on the employee's behalf.

18 Additionally, there were two employees who met both of the conditions listed in the prior
19 two paragraphs; namely that they were on the membership list and also on the authorization card
20 list. These two employees were only counted one time each.

21 ///

22 ///

23 ///

25 ³ The general rule is that the individual authorization must be dated and must be current. National
26 Labor Relations Board, *An Outline of Law and Procedure in Representation Cases; A. Werman
27 & Sons*, 114 NLRB 629 (1956). It has been held that cards dated more than a year prior to the
28 filing of the petition were sufficiently current. *Carey Mfg. Co.*, 69 NLRB 224 fn. 4 (1946); *see also Northern Trust Co.*, 69 NLRB 652 fn. 4 (1946) (10 months); *Covenant Aviation Security, LLC*, 349 NLRB 699 (2007), citing *Carey Mfg.* with approval.

1 There were 7 instances in which AFSCME listed the employee on its membership list and
2 the employee was also listed on the dues list as provided by the State. The listing on the dues list
3 showed the employee had left State service but that the date of termination was subsequent to the
4 filing of the petition for recognition. Therefore, they were employees of the State as well as
5 members of AFSCME on the date the petition for recognition was filed and thus the Board finds
6 that these seven employees should be counted.

7 There were 30 instances in which an employee was on the dues list as provided by the
8 State but not on the AFSCME membership list. However, the employees were on the AFSCME
9 authorization card list and AFSCME also produced an authorization card with a signature and a
10 date that was within one year of the filing of the petition for recognition. Thus, the Board finds
11 that these 30 employees should also be counted.

12 There were 5 instances in which an employee was on the dues list as provided by the
13 State but not on the AFSCME membership list. However, the employees were on the AFSCME
14 authorization card list and AFSCME also produced an authorization card with a signature but not
15 a date that was within one year of the filing of the petition (2 instances) or for which there was
16 no date at all (3 instances). Pursuant to an October 1, 2019, meeting with EMRB staff and
17 AFSCME, AFSCME on October 17, 2019, provided an affidavit explaining that the cards must
18 have been signed in 2019 as it did not begin collecting authorization cards until such time. This
19 affidavit was included as Appendix 3 to the audit report. The Board accepts the contents of the
20 affidavit as true. *Dart Container Corp.*, 294 NLRB 798 (1989); *see also Metal Sales Mfg.*, 310
21 NLRB 597 (1993); National Labor Relations Board, *An Outline of Law and Procedure in*
22 *Representation Case*. Thus, the Board finds that these five employees should also be counted.

23 There were 29 instances in which an employee was on the AFSCME authorization card
24 list and AFSCME also produced an authorization card with a signature but not on a date that was
25 within one year of the filing of the petition or for which there was no date (17 instances) or for
26 which there was a date but no year (5 instances). Pursuant to an October 1, 2019, meeting with
27 EMRB staff and AFSCME, AFSCME on October 17, 2019, provided an affidavit explaining that
28 the cards must have been signed in 2019 as it did not begin collecting authorization cards until

1 such time. This affidavit may be found in Appendix 3. The Board accepts the contents of the
2 affidavit as true. *Dart Container Corp.*, 294 NLRB 798 (1989); *see also Metal Sales Mfg.*, 310
3 NLRB 597 (1993); National Labor Relations Board, *An Outline of Law and Procedure in*
4 *Representation Case*. Thus, the Board finds that these 29 employees should also be counted.

5 There were 54 instances in which an employee was on the dues list as provided by the
6 State but not on the membership list as provided by AFSCME. Pursuant to the October 1, 2019
7 meeting reference above, AFSCME on October 17, 2019 provided an affidavit explaining why
8 the employees were not on the original membership list. This affidavit was included as Appendix
9 2 to the audit report. In the affidavit AFSCME stated that all 54 employees were members and
10 requested that all of them be counted. AFSCME also provided authorization cards for 47 of the
11 employees. Staff counted 47 of the 54 employees as being a part of this group (i.e., those covered
12 by the affidavit and for which authorization cards had been provided). The Board accepts the
13 contents of the affidavit as true. *Dart Container Corp.*, 294 NLRB 798 (1989); *see also Metal*
14 *Sales Mfg.*, 310 NLRB 597 (1993); National Labor Relations Board, *An Outline of Law and*
15 *Procedure in Representation Case*. Thus, the Board finds that these 47 employees should also be
16 counted.

17 Special Case of Duplicate Memberships in Labor Organizations

18 While conducting the audit for a different bargaining unit (Unit G) staff learned that two
19 other labor organizations, the Nevada Corrections Association (“NCA”) and the Nevada State
20 Law Enforcement Officers Association (“NSLEOA”), also have members within the bargaining
21 unit for which the State has been deducting dues. Accordingly, EMRB staff issued an addendum
22 to its audit report on November 28, 2019. It showed that 47 employees on the AFSCME
23 membership or authorization card lists were also having dues deducted from their paychecks on
24 behalf of NCA while six employees were also having dues deducted on behalf of NSLEOA.

25 ///

26 ///

27 ///

28 ///

1 At the Board meeting held December 17, 2019, Fernando Colon, Associate General
2 Counsel for AFSCME, stated that there is nothing in the text of Senate Bill 135 which prohibits
3 dual memberships when no labor organization has yet been named as the exclusive
4 representative. Indeed, the plain and unambiguous text of NRS 288.520 that a labor organization
5 seeking to be designated as the exclusive representative of a bargaining unit need only show
6 evidence that it has been authorized to serve as “a” representative, not “the” representative. This,
7 when coupled with the practice that the State itself has supported allowing employees to be
8 members, and have dues deducted, from multiple unrecognized labor organizations, should not
9 be used against a labor organization seeking to be recognized. *Brooklyn Gas Co.*, 110 NLRB 18,
10 20 (1955) (“There is no reason why employees, if they so desire, may not join more than one
11 labor organization.”). *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124
12 Nev. 138, 147, 179 P.3d 542, 548 (2008) (“it is well established that, when interpreting a statute,
13 the language of the statute should be given its plain meaning unless doing so violates the act’s
14 spirit.”); *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293–94, 995 P.2d
15 482, 485 (2000) (“Where the language of a statute is plain and unambiguous, and its meaning
16 clear and unmistakable, there is no room for construction, and the courts are not permitted to
17 search for its meaning beyond the statute itself.”).

18 It should also be noted that on December 17, 2019 both AFSCME representative Ashley
19 Jenkins and Silvia Villanueva, attorney from Dyer Lawrence LLP, who represents the NCA,
20 stated that NCA would be dissolving as of the end of 2019. To-date this has not yet occurred.
21 However, the Board finds this to be a moot point based on allowing duplicate memberships as
22 discussed above.

23 Special Case of the Submittal of Letters Alleging Misrepresentation

24 At the December 17, 2010, Board meeting Corrections Officer Paul Lunkwitz spoke on
25 behalf of the Fraternal Order of Police, Lodge 21 (FOP). At that time Officer Lunkwitz
26 submitted 18 letters from various corrections officers claiming that AFSCME misrepresented to
27 authorization card signers what such cards were for and that in one case forgery of the signature
28 was alleged. His comments were followed by that of three other corrections officers, who

1 reiterated his allegations. Ashley Jenkins of AFSCME then addressed the Board, stating that
2 FOP was making its comments to slow down the process as that organization has yet been unable
3 to gather enough support to file its own petition in that they only began this process around
4 October 18, 2019. The Board at that time gave employees until January 13, 2020, to submit any
5 additional letters. FOP did not submit any additional letters pursuant to the Board's Order.
6 Instead, FOP filed authorization cards. FOP did not file a petition or request to intervene in the
7 current matter. As such, the Board does not discount AFSCME's showing. *See also* above
8 regarding duplicate memberships; *see also Gary Steel Products Corp.*, 144 NLRB 1160 (1963).
9 Further, even if the Board were to discount the letters submitted by FOP, AFSCME would still
10 be over the 50% threshold.

11 The level of support for AFSCME for this bargaining unit is accordingly 934 employees
12 (517+297+2+7+30+5+29+47).

13 **Summary**

14 As detailed in Step 1 above, there are 1,769 employees in the bargaining unit. Thus, to
15 meet the requirement of NRS 288.520 there must be evidence supporting the petition of at least
16 885 employees, which is 50% plus one.

17 As further detailed in Step 2 above, there are 934 bargaining unit employees who either
18 are a member of AFSCME or who have signed an authorization card, all of whom have been
19 verified through the staff audit process. This would place the percentage at 52.8% (934 / 1769).

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

DESIGNATION ORDER

Based on the foregoing,

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

DATED this 22nd day of January 2020.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 
BRENT ECKERSLEY, ESQ., Chair

By: 
SANDRA MASTERS, Vice-Chair

By: 
CAM WALKER, Board Member

By: 
GARY COTTINO, Board Member

By: 
BRETT HARRIS, ESQ., Board Member