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THE ASSIGNMENT OF EXECUTIVE DEPARTMENT JOB CLASSIFICATION TO BARGANING UNITS PURSUANT TO SENATE BILL 135 OF THE 80TH SESSION OF THE NEVADA LEGISLATURE ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) ) AFSCME, LOCAL 4041 OBJECTION TO DHRM BARGAINING UNIT RECOMMENDATIONS IN DHRM REPORT

In accordance with the Notice of Receipt of Recommendations issued in the above captioned case, the American Federation of State, County and Municipal Employees, Local 4041 (AFSCME) files this objection to the recommendations for the placement of positions in the statutorily created bargaining units in the report filed by the State of Nevada (State), Department of Administration, Division of Human Resource Management (DHRM). AFSCME objects to
both the misplacement of positions as well as the exclusion of positions from any statutorily created bargaining unit on the alleged basis that the position(s) in question function in a “managerial” capacity as defined in the statute governing state employee recognition and representation.

In this pleading, references to sections of the statute refer to sections in SB 135 (the “Statute” or the “Act”), as enrolled. Further, bargaining unit letter designations correspond to the subsection of Section 29 of the Statute wherein the unit is described. For example, the bargaining unit described in Section 29.1(a) will be referred to as “Unit A.”

As a general matter, AFSCME objects to DHRM’s recommendations of the positions to be included/excluded in every unit, with the exception of the recommendation for the positions to be included in the unit described in Section 29.1(k) (firefighters) in order to preserve our right to participate in any rulemaking proceeding governing the composition of these units.

Objecion to DHRM Recommendations to Include/Exclude Positions from the Bargaining Unit Established by Section 29.1(a) of the Statute (Unit A)

AFSCME generally objects to the State’s inclusion and exclusion of positions in/from the “labor and maintenance” bargaining unit established by Sec. 29.1(a) of the Statute. More specifically, we object to the State’s classification of the following positions as Unit J supervisors and assert the positions are appropriately included in Unit A:

Job Title Code: 9.413, Job Title: HVACR Specialist 3
Job Title Code: 9.471, Job Title: Theater Technician 2
Job Title Code: 9.434, Job Title: Events Center Technician 2
Job Title Code: 9.612, Job Title: Facilities Supervisor 1
Job Title Code: 9.609, Job Title: Facilities Supervisor 2
Job Title Code: 9.627, Job Title: Grounds Supervisor 1
Job Title Code: 9.620, Job Title: Grounds Supervisor 2
Job Title Code: 9.625, Job Title: Custodial Supervisor 1
Job Title Code: 9.115, Job Title: Highway Maintenance Supervisor 1
Job Title Code: 9.106, Job Title: Highway Maintenance Supervisor 2
Job Title Code: 9.460, Job Title: Painter 3
Section 29.3.(e) of the Statute cross references the definition of “supervisory employee” found in the local government bargaining law codified at NRS 288.075(1)(a). The EMRB is familiar with that section of law and established case law noting that an employee is considered supervisory if the employee meets any one of the 12 criteria listed within the definition. Although the Board has applied the U.S. Supreme Court precedent in *City of Elko v. Elko Police Officers Protective Association, Nevada Public Safety Officer Communication Workers of America, AFL-CIO, Local 9110*, Case No. 2017-026, Order Item No. 831 (2018) (applying *NLRB v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 710-711 (2001) (*Kentucky River*)), it is important to note the distinction between NRS 288.075 and the National Labor Relations Act (NLRA) on which *Kentucky River* is based. Specifically, NRS 288.075 includes the following phrase which is absent from the NLRA: “The exercise of such authority shall not be deemed to place the employee in supervisory employee status unless the exercise of such authority occupies a significant portion of the employee’s workday.” NRS 288.075(1)(a).

The addition of this sentence to the NLRA standard is substantial and meaningful. It expressly distinguishes the Nevada law from the NLRA. As the EMRB explained in *City of Elko*, this additional sentence is to “ensure that supervisory authority was an authentic grant of supervisory authority and to guard against the practice of an employer creating a “straw boss” as a ruse to avoid collective bargaining obligations.” *Id.* at 5.

In the case of the above listed positions, AFSCME asserts that the incumbent employees do not responsibly exercise any of the supervisory authorities described in the definition because they do not exercise independent judgment and because they do not spend a significant portion of their workday exercising supervisory authority. Therefore, the positions at issue should be included in Unit A.

Finally, although not listed in the state’s classification plan or on the list of positions included/excluded from bargaining units, the “Park Aid 1 (seasonal)” position is properly included in Unit A.
Objection to State Recommendations to Include/Exclude Positions from the Bargaining

Unit Established by Section 29.1(b) of the Statute (Unit B)

AFSCME objects to the recommendations of the positions to be included in this unit in order to preserve our right to participate in any rulemaking proceeding governing the composition of Unit B.

Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining

Unit Established by Section 29.1(c) of the Statute (Unit C)

AFSCME generally objects to the State’s inclusion and exclusion of positions in/from the “technical” bargaining unit established by Sec. 29.1(c) of the Statute. More specifically, we object to the State’s classification of the following positions as Unit J supervisors and assert the positions are appropriately included in Unit C:

Job Title Code: 11.242, Job Title: Military Security Officer 2
Job Title Code: 11.243, Job Title: Military Security Officer 3
Job Title Code: 1.825, Job Title: Conservation Crew Supervisor 1
Job Title Code: 1.820, Job Title: Conservation Crew Supervisor 2
Job Title Code: 1.817, Job Title: Conservation Crew Supervisor 3
Job Title Code: 10.238, Job Title: Health Program Specialist 2
Job Title Code: 13.255, Job Title: Supervisory Compliance/Enforcement Investigator

In this regard, for the reasons stated in our objection to DHRM’s recommendations in Units A, AFSCME asserts that the incumbent employees do not responsibly exercise any of supervisory authorities described in the definition because they do not exercise independent judgment and because they do not spend a significant portion of their workday exercising supervisory authority. Therefore, the positions at issue should be included in Unit C.
In addition, AFSCME asserts the following positions, recommended by the State as excluded from any bargaining unit as "managerial," be included in Unit C:

Job Title Code: 7.218, Job Title: Administrative Service Officer 1
Job Title Code: 12.554, Job Title: Correctional Classification and Planning Specialist

Section 19 2.(a) of the Statute states:

A managerial employee whose primary function, as determined by the Board, is to administer and control the business of any agency, board, bureau, commission, department, division, elected officer or any other unit of the Executive Department and who is vested with discretion and independent judgment with regard to the general conduct and control of that agency, board, bureau, commission, department, division, elected officer or unit.

This is an extremely narrow definition and the incumbents in the positions listed above do not meet it. A cursory review of the position descriptions reveals their authority is constrained to the application of policy and they neither make policy or "administer and control the business" of their agency.

Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining Unit Established by Section 29.1(d) of the Statute (Unit D)

AFSCME objects to the recommendations of the positions to be included in this unit in order to preserve our right to participate in any rulemaking proceeding governing the composition of Unit D. For the reasons described more fully below (in the Unit E section), the following position should not be included in Unit D, but should be included in Unit E:

Job Title Code: 10.148, Job Title: Treatment Home Provider

DHRM recommended the following positions be included in Unit E, health care professionals, but because the positions do not provide patient care, the positions should be
included in Unit D. These positions provide social service case work, which is distinct from health-related services.

Job Title Code: 12.377, Job Title: Social Worker 1
Job Title Code: 12.361, Job Title: Social Worker 2
Job Title Code: 12.363, Job Title: Social Worker 3

DHRM designated the following position as supervisory. Because the incumbents perform no supervisory functions, the position is properly included in Unit D, the patient care professional unit:

Job Title Code: 10.305, Job Title: Psychiatric Nurse 3

Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining Unit Established by Section 29.1(e) of the Statute (Unit E)

AFSCME objects to the recommendations of the positions to be included in this unit in order to preserve our right to participate in any rulemaking proceeding governing the composition of Unit E. Specifically, AFSCME objects to the following position designated by DHRM as “professional” (Unit D):

Job Title Code: 10.148, Job Title: Treatment Home Provider

Because this position does not meet the definition of “professional,” and because the duties involve patient care, the position is properly included with Unit E, non-professional patient care. The educational qualifications for the position are limited to a Bachelor’s degree in general courses of study as opposed to a “prolonged course of specialized intellectual instruction” as required by Section 29 3.(d) of the Statute.

As stated above, the following positions should be in Unit D, not Unit E:

Job Title Code: 12.377, Job Title: Social Worker 1
Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining

Unit Established by Section 29.1(f) of the Statute (Unit F)

AFSCME objects to the recommendations of the positions to be included in this unit in order to preserve our right to participate in any rulemaking proceeding governing the composition of Unit F.

Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining

Unit Established by Section 29.1(g) of the Statute (Unit G)

AFSCME generally objects to the State’s inclusion and exclusion of positions in/from the “Category 1 Peace Officer” bargaining unit established by Sec. 29.1(g) of the Act. More specifically, we object to the State’s classification of the following position as a Unit J supervisor and assert the positions is appropriately included in Unit G:

Job Title Code: 13.205, Job Title: DPS Sergeant
Job Title Code: 13.221, Job Title: University Police Sergeant

We incorporate by reference our position regarding the definition of supervisory employee stated under Unit A. In the case of the DPS Sergeant, the incumbents do not use independent judgment to perform any supervisory duties and do not spend a significant portion of their workday exercising any supervisory authority. Therefore, the position at issue should be included in Unit G.

Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining

Unit Established by Section 29.1(h) of the Statute (Unit H)

AFSCME generally objects to the State’s inclusion and exclusion of positions in/from the “Category 2 Peace Officer” bargaining unit established by Sec. 29.1(h) of the Act. More
specifically, we object to the State’s classification of the following position as a Unit J supervisor and assert the positions is appropriately included in Unit H:

Job Title Code: 13.102, Job Title: Agricultural Enforcement Officer 2

We incorporate by reference our position regarding the definition of supervisory employee stated under Unit A. In the case of the Agricultural Enforcement Officer 2, the incumbents do not use independent judgment to perform any supervisory duties and do not spend a significant portion of their workday exercising any supervisory authority. Therefore, the position at issue should be included in Unit H.

Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining Unit Established by Section 29.1(i) of the Statute (Unit I)

AFSCME generally objects to the State’s inclusion and exclusion of positions in/from the “Category 3 Peace Officer” bargaining unit established by Sec. 29.1(i) of the Act. More specifically, we object to the State’s classification of the following positions as Unit J supervisors and assert the positions are appropriately included in Unit I:

Job Title Code: 13.311, Job Title: Correctional Sergeant

Job Title Code: 13.321, Job Title: Forensic Specialist 4

We incorporate by reference our position regarding the definition of supervisory employee stated under Unit A. In the cases of the Correctional Sergeants and Forensic Specialists 4, the incumbents do not use independent judgment to perform any supervisory duties and do not spend a significant portion of their workday exercising any supervisory authority. Rather, they serve as team leaders and make provide routine direction by communicating direction provided by their direct supervisor. In the case of Correctional Sergeants, Lieutenants provide responsible direction. In the case of Forensic Specialists 4, incumbents communicate direction provided by professional staff. Therefore, the positions at issue should be included in Unit G.
In the case of Correctional Sergeants, the class specification itself indicated that Lieutenants have authentic supervisory authority. Also of note, in other public jurisdictions that use definitions that are the same or similar to the supervisory employee definition in NRS 288.075, Sergeants are, without exception, considered non-supervisory for purposes of bargaining unit placement.

**Objection to DHRM Recommendations to Include/Exclude Positions from the Bargaining Unit Established by Section 29.1(j) of the Statute (Unit J)**

AFSCME generally objects to the State’s inclusion and exclusion of positions in/from the “Supervisors” bargaining unit established by Sec. 29.1(j) of the Statute. More specifically, we object to the State’s classification of the following positions as Unit J supervisors and assert the positions are appropriately included in non-supervisory units as discussed above:

- Job Title Code: 9.413, Job Title: HVACR Specialist 3
- Job Title Code: 9.471, Job Title: Theater Technician 2
- Job Title Code: 9.434, Job Title: Events Center Technician 2
- Job Title Code: 9.612, Job Title: Facility Supervisor 1
- Job Title Code: 9.609, Job Title: Facility Supervisor 2
- Job Title Code: 9.627, Job Title: Grounds Supervisor 1
- Job Title Code: 9.620, Job Title: Grounds Supervisor 2
- Job Title Code: 9.625, Job Title: Custodial Supervisor 1
- Job Title Code: 11.242, Job Title: Military Security Officer 2
- Job Title Code: 11.241, Job Title: Military Security Officer 3
- Job Title Code: 13.205, Job Title: DPS Sergeant
- Job Title Code: 13.102, Job Title: Agricultural Enforcement Officer 2
- Job Title Code: 13.311, Job Title: Correctional Sergeant
- Job Title Code: 13.321, Job Title: Forensic Specialist 4
- Job Title Code: 1.825, Job Title: Conservation Crew Supervisor 1
- Job Title Code: 1.820, Job Title: Conservation Crew Supervisor 2
- Job Title Code: 1.817, Job Title: Conservation Crew Supervisor 3
- Job Title Code: 10.238, Job Title: Health Program Specialist 2
Job Title Code: 13.255, Job Title: Supervisory Compliance/Enforcement Investigator
Job Title Code: 9.115, Job Title: Highway Maintenance Supervisor 1
Job Title Code: 9.106, Job Title: Highway Maintenance Supervisor 2
Job Title Code: 9.460, Job Title: Painter 3
Job Title Code: 9.322, Job Title: Equipment Mechanic 4
Job Title Code: 3.530, Job Title: Transportation & Safety Attendant 3
Job Title Code: 9.200, Job Title: Special Equipment Operator 3
Job Title Code: 10.305, Job Title: Psychiatric Nurse 3
Job Title Code: 13.221, Job Title: University Police Sergeant

In addition, AFSCME asserts the following positions, recommended by the State as excluded from any bargaining unit as “managerial” positions, be included in Unit J. The incumbents of these positions to do administer and control the agency and do not set policy. Instead, they apply policy and supervise subordinate employees:

Job Title Code: 6.217, Job Title: Contract Compliance Manager
Job Title Code: 7.217, Job Title: Administrative Services Officer 2
Job Title Code: 7.216, Job Title: Admin Services Officer 3
Job Title Code: 7.406, Job Title: Assistant Chief, Right of Way
Job Title Code: 7.810, Job Title: Museum Director 1
Job Title Code: 10.301, Job Title: Director, Nursing Services 1
Job Title Code: 10.300, Job Title: Director, Nursing Services 2
Job Title Code: 11.432, Job Title: DMV Services Manager 1
Job Title Code: 11.429, Job Title: DMV Services Manager 2
Job Title Code: 11.420, Job Title: DMV Services Manager 3
Job Title Code: 11.534, Job Title: Safety Manager 1 - Director
Job Title Code: 12.139, Job Title: ESD Manager 1
Job Title Code: 12.138, Job Title: ESD Manager 2
Job Title Code: 12.137, Job Title: ESD Manager 3
Job Title Code: 12.357, Job Title: Social Services Manager 1
Job Title Code: 12.350, Job Title: Social Services Manager 2
Job Title Code: 12.409, Job Title: Rehabilitation Manager 1
Job Title Code: 12.510, Job Title: Correctional Manager

Job Title Code: 13.263, Job Title: Unit Manager, Youth Parole Bureau

Job Title Code: 13.309, Job Title: Correctional Captain

Job Title Code: 13.310, Job Title: Correctional Lieutenant

Respectfully Submitted,

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I hereby certify that I have mailed, via First Class Mail, a true and correct copy of AFSCME Local 4041’s objections to DHRM bargaining unit recommendations to:

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