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AUG 19 2019

**STATE OF NEVADA
E.M.R.B.**

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State of Nevada
Government Employee-Management
Relations Board

15 IN RE:)
16)
17 THE ASSIGNMENT OF EXECUTIVE)
18 DEPARTMENT JOB CLASSIFICATION TO)
19 BARGAINING UNITS PURSUANT TO SENATE)
20 BILL 135 OF THE 80TH SESSION OF THE)
21 NEVADA LEGISLATURE)
22)
23)
24)
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26 _____)

CASE NO. 2019-017

**AFSCME, LOCAL 4041
OBJECTION TO DHRM
BARGAINING UNIT
RECOMMENDATIONS IN
DHRM REPORT**

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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

33 both the misplacement of positions as well as the exclusion of positions from any statutorily
34 created bargaining unit on the alleged basis that the position(s) in question function in a
35 “managerial” capacity as defined in the statute governing state employee recognition and
36 representation.

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

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

45

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

48

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

53

54 Job Title Code: 9.413, Job Title: HVACR Specialist 3

55 Job Title Code: 9.471, Job Title: Theater Technician 2

56 Job Title Code: 9.434, Job Title: Events Center Technician 2

57 Job Title Code: 9.612, Job Title: Facilities Supervisor 1

58 Job Title Code: 9.609, Job Title: Facilities Supervisor 2

59 Job Title Code: 9.627, Job Title: Grounds Supervisor 1

60 Job Title Code: 9.620, Job Title: Grounds Supervisor 2

61 Job Title Code: 9.625, Job Title: Custodial Supervisor 1

62 Job Title Code: 9.115, Job Title: Highway Maintenance Supervisor 1

63 Job Title Code: 9.106, Job Title: Highway Maintenance Supervisor 2

64 Job Title Code: 9.460, Job Title: Painter 3

65 Job Title Code: 9.322, Job Title: Equipment Mechanic 4
66 Job Title Code: 3.530, Job Title: Transportation & Safety Attendant 3
67 Job Title Code: 9.200, Job Title: Special Equipment Operator 3
68

69 Section 29.3.(e) of the Statute cross references the definition of “supervisory employee”
70 found in the local government bargaining law codified at NRS 288.075(1)(a). The EMRB is
71 familiar with that section of law and established case law noting that an employee is considered
72 supervisory if the employee meets any one of the 12 criteria listed within the definition. Although
73 the Board has applied the U.S. Supreme Court precedent in *City of Elko v. Elko Police Officers*
74 *Protective Association, Nevada Public Safety Officer Communication Workers of America, AFL-*
75 *CIO, Local 9110*, Case No. 2017-026, Order Item No. 831 (2018) (applying *NLRB v. Kentucky*
76 *River Cmty. Care, Inc.*, 532 U.S. 706, 710-711 (2001)(*Kentucky River*)), it is important to note
77 the distinction between NRS 288.075 and the National Labor Relations Act (NLRA) on which
78 *Kentucky River* is based. Specifically, NRS 288.075 includes the following phrase which is
79 absent from the NLRA: “The exercise of such authority shall not be deemed to place the
80 employee in supervisory employee status unless the exercise of such authority occupies a
81 significant portion of the employee’s workday.” NRS 288.075(1)(a).

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

87
88 In the case of the above listed positions, AFSCME asserts that the incumbent employees
89 do not responsibly exercise any of the supervisory authorities described in the definition because
90 they do not exercise independent judgment and because they do not spend a significant portion
91 of their workday exercising supervisory authority. Therefore, the positions at issue should be
92 included in Unit A.

93
94 Finally, although not listed in the state’s classification plan or on the list of positions
95 included/excluded from bargaining units, the “Park Aid 1 (seasonal)” position is properly
96 included in Unit A.

97

98

99 **Objection to State Recommendations to Include/Exclude Positions from the Bargaining**

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

101

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

105

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

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

108

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

113

114 Job Title Code: 11.242, Job Title: Military Security Officer 2

115 Job Title Code: 11.243, Job Title: Military Security Officer 3

116 Job Title Code: 1.825, Job Title: Conservation Crew Supervisor 1

117 Job Title Code: 1.820, Job Title: Conservation Crew Supervisor 2

118 Job Title Code: 1.817, Job Title: Conservation Crew Supervisor 3

119 Job Title Code: 10.238, Job Title: Health Program Specialist 2

120 Job Title Code: 13.255, Job Title: Supervisory Compliance/Enforcement Investigator

121

122 In this regard, for the reasons stated in our objection to DHRM's recommendations in
123 Units A, AFSCME asserts that the incumbent employees do not responsibly exercise any of
124 supervisory authorities described in the definition because they do not exercise independent
125 judgment and because they do not spend a significant portion of their workday exercising
126 supervisory authority. Therefore, the positrons at issue should be included in Unit C.

127

128 In addition, AFSCME asserts the following positions, recommended by the State as
129 excluded from any bargaining unit as “managerial,” be included in Unit C:

130

131 Job Title Code: 7.218, Job Title: Administrative Service Officer 1

132 Job Title Code: 12.554, Job Title: Correctional Classification and Planning Specialist

133

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

135

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

142

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

147

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

150

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

155

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

157

158 DHRM recommended the following positions be included in Unit E, health care
159 professionals, but because the positions do not provide patient care, the positions should be

160 included in Unit D. These positions provide social service case work, which is distinct from
161 health-related services.

162

163 Job Title Code: 12.377, Job Title: Social Worker 1

164 Job Title Code: 12.361, Job Title: Social Worker 2

165 Job Title Code: 12.363, Job Title: Social Worker 3

166

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

170

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

172

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

175

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

180

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

182

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

188

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

190

191 Job Title Code: 12.377, Job Title: Social Worker 1

192 Job Title Code: 12.361, Job Title: Social Worker 2

193 Job Title Code: 12.363, Job Title: Social Worker 3

194

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

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

197

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

201

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

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

204

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

209

210 Job Title Code: 13.205, Job Title: DPS Sergeant

211 Job Title Code: 13.221, Job Title: University Police Sergeant

212

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

218

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

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

221

222 AFSCME generally objects to the State’s inclusion and exclusion of positions in/from
223 the “Category 2 Peace Officer” bargaining unit established by Sec. 29.1(h) of the Act. More

224 specifically, we object to the State’s classification of the following position as a Unit J supervisor
225 and assert the positions is appropriately included in Unit H:

226

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

228

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

234

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

237

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

242

243 Job Title Code: 13.311, Job Title: Correctional Sergeant

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

245

246 We incorporate by reference our position regarding the definition of supervisory
247 employee stated under Unit A. In the cases of the Correctional Sergeants and Forensic Specialists
248 4, the incumbents do not use independent judgment to perform any supervisory duties and do
249 not spend a significant portion of their workday exercising any supervisory authority. Rather,
250 they serve as team leaders and make provide routine direction by communicating direction
251 provided by their direct supervisor. In the case of Correctional Sergeants, Lieutenants provide
252 responsible direction. In the case of Forensic Specialists 4, incumbents communicate direction
253 provided by professional staff. Therefore, the positions at issue should be included in Unit G.

254

255 In the case of Correctional Sergeants, the class specification itself indicated that
256 Lieutenants have authentic supervisory authority. Also of note, in other public jurisdictions that
257 use definitions that are the same or similar to the supervisory employee definition in NRS
258 288.075, Sergeants are, without exception, considered non-supervisory for purposes of
259 bargaining unit placement.

260

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

263

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

268

269 Job Title Code: 9.413, Job Title: HVACR Specialist 3

270 Job Title Code: 9.471, Job Title: Theater Technician 2

271 Job Title Code: 9.434, Job Title: Events Center Technician 2

272 Job Title Code: 9.612, Job Title: Facility Supervisor 1

273 Job Title Code: 9.609, Job Title: Facility Supervisor 2

274 Job Title Code: 9.627, Job Title: Grounds Supervisor 1

275 Job Title Code: 9.620, Job Title: Grounds Supervisor 2

276 Job Title Code: 9.625, Job Title: Custodial Supervisor 1

277 Job Title Code: 11.242, Job Title: Military Security Officer 2

278 Job Title Code: 11.241, Job Title: Military Security Officer 3

279 Job Title Code: 13.205, Job Title: DPS Sergeant

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

281 Job Title Code: 13.311, Job Title: Correctional Sergeant

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

283 Job Title Code: 1.825, Job Title: Conservation Crew Supervisor 1

284 Job Title Code: 1.820, Job Title: Conservation Crew Supervisor 2

285 Job Title Code: 1.817, Job Title: Conservation Crew Supervisor 3

286 Job Title Code: 10.238, Job Title: Health Program Specialist 2

287 Job Title Code: 13.255, Job Title: Supervisory Compliance/Enforcement Investigator
288 Job Title Code: 9.115, Job Title: Highway Maintenance Supervisor 1
289 Job Title Code: 9.106, Job Title: Highway Maintenance Supervisor 2
290 Job Title Code: 9.460, Job Title: Painter 3
291 Job Title Code: 9.322, Job Title: Equipment Mechanic 4
292 Job Title Code: 3.530, Job Title: Transportation & Safety Attendant 3
293 Job Title Code: 9.200, Job Title: Special Equipment Operator 3
294 Job Title Code: 10.305, Job Title: Psychiatric Nurse 3
295 Job Title Code: 13.221, Job Title: University Police Sergeant
296
297 In addition, AFSCME asserts the following positions, recommended by the State as
298 excluded from any bargaining unit as “managerial” positions, be included in Unit J. The
299 incumbents of these positions to do administer and control the agency and do not set policy.
300 Instead, they apply policy and supervise subordinate employees:
301
302 Job Title Code: 6.217, Job Title: Contract Compliance Manager
303 Job Title Code: 7.217, Job Title: Administrative Services Officer 2
304 Job Title Code: 7.216, Job Title: Admin Services Officer 3
305 Job Title Code: 7.406, Job Title: Assistant Chief, Right of Way
306 Job Title Code: 7.810, Job Title: Museum Director 1
307 Job Title Code: 10.301, Job Title: Director, Nursing Services 1
308 Job Title Code: 10.300, Job Title: Director, Nursing Services 2
309 Job Title Code: 11.432, Job Title: DMV Services Manager 1
310 Job Title Code: 11.429, Job Title: DMV Services Manager 2
311 Job Title Code: 11.420, Job Title: DMV Services Manager 3
312 Job Title Code: 11.534, Job Title: Safety Manager 1 - Director
313 Job Title Code: 12.139, Job Title: ESD Manager 1
314 Job Title Code: 12.138, Job Title: ESD Manager 2
315 Job Title Code: 12.137, Job Title: ESD Manager 3
316 Job Title Code: 12.357, Job Title: Social Services Manager 1
317 Job Title Code: 12.350, Job Title: Social Services Manager 2
318 Job Title Code: 12.409, Job Title: Rehabilitation Manager 1

319 Job Title Code: 12.510, Job Title: Correctional Manager
320 Job Title Code: 13.263, Job Title: Unit Manager, Youth Parole Bureau
321 Job Title Code: 13.309, Job Title: Correctional Captain
322 Job Title Code: 13.310, Job Title: Correctional Lieutenant

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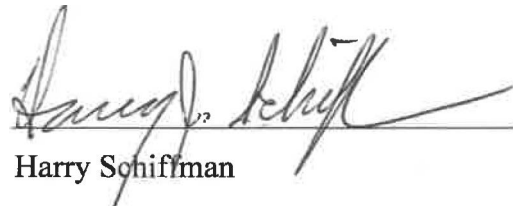
Respectfully Submitted,

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A handwritten signature in black ink, appearing to read "Harry Schiffman", is written over a horizontal line.

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Harry Schiffman

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President, AFSCME Local 4041

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

343

344

Peter Long

345

Administrator, Department Human Resources Management

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