

THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by

**American Federation of State, County
and Municipal Employees, Local 2620**

from the Executive Officer's September 26,
2024, Approval of the Contract Between the
California Department of Rehabilitation and
State Hospitals and Purnima Karia, dba We
Care Mobility for Occupational Therapist
Service

BOARD DECISION

PSC NO. 26-01

February 9, 2026

APPEARANCES: Sarah S. Kanbar, Esq., on behalf of the American Federation of State, County and Municipal Employees, Local 2620; Le Wee Yun, Attorney, on behalf of the California Department of Rehabilitation.

BEFORE: Kathy Baldree, President; Kimiko Burton, Vice President; Dr. Gail Willis, Ana Matosantos, and Shawnda Westly.

DECISION

The American Federation of State, County and Municipal Employees, Local 2620 (AFSCME) timely appealed from the State Personnel Board (SPB) Executive Officer's decision approving a contract for personal services (the Contract) between the California Department of Rehabilitation (DOR) and Purnima Karia, dba We Care Mobility for Occupational Therapist Service (We Care). The members of the State Personnel Board (Board) unanimously find that DOR established that the Contract is authorized under Government Code section 19130, subdivision (b)(3). The Board, therefore, denies AFSCME's appeal and approves the contract.

BACKGROUND

The Contract calls for We Care to perform clinical and behind-the-wheel assessments for DOR's Mobility Evaluation Program. DOR contends that the Contract is necessary so that licensed occupational therapists are available to assist mobility-impaired

persons with issues related to adaptive driving equipment, vehicle modifications, driver training, and transportation. AFSCME contends that the Contract unlawfully contracts for services that state employees can perform and that DOR did not use sufficient effort to meaningfully recruit civil servants to perform them.

DOR's Mobility Evaluation Program is dedicated to serving the needs of mobility-impaired persons related to independent driving and transportation. Such persons are assessed to determine their abilities related to vision, cognition, and movement. When applicable, an on-road assessment establishes the person's driving skills and the effect of their impairment(s) on their ability to drive. The assessment allows DOR to determine whether the individual can safely drive, with or without specialized equipment, or whether they should be transported as a passenger. Similar assessments were previously performed by a civil servant in the Mobility Evaluation Specialist (MES) classification, who retired in June 2021.

An MES must be an Occupational Therapist, Registered, which requires a master's degree, as well as certification and two years of experience performing tests and assessments that can be applied to driving tasks. The salary for the MES classification, however, is equivalent to positions requiring only an associate's degree in occupational therapy. When DOR attempted to fill the vacancy for its MES position, it received no qualified candidates. Although neither party presented a comparative analysis or evidence related to the salary for the position, both parties agree that the depressed MES salary impedes DOR's ability to attract viable candidates.

The Contract was effective from January 25, 2023, through November 30, 2025, and encumbered \$10,000.00. As the Contract has already expired, the only effect of a decision to overturn the Executive Officer's determination would be to affect DOR's ability to continue to contract for similar personal services. (Gov. Code, § 19135.)

PROCEDURAL HISTORY

On May 22, 2025, AFSCME requested, under Government Code¹ section 19132 and California Code of Regulations, title 2, sections 547.60 and 547.61, that the Executive Officer review and disapprove the Contract because the services contracted for can and should be provided by civil service employees. AFSCME argued that the work to be performed under the Contract could be competently and efficiently performed by a civil servant in the MES classification. Specifically, AFSCME argued that the Contract does not comply with section 19130, subdivision (b)(3), and is therefore impermissible. DOR provided its Response on June 11, 2025, asserting that the Contract was justified due to its difficulty in filling the vacant MES position and its need to provide mobility evaluation services through a High-Tech Driver Assessment Services program. This program operates on a fee-for-service basis for non-DOR clients and did not exist at the time of DOR's prior MES's retirement. On June 16, 2025, AFSCME submitted its Reply to the Executive Officer contending, among other things, that DOR failed to establish that it diligently attempted to fill its MES vacancy prior to contracting with We Care.

On July 22, 2025, the Executive Officer issued her decision finding that “[t]he submitted information sufficiently shows that DOR was simply unable, despite reasonable, good-faith efforts, to successfully recruit employees for the MES vacancy.” Further, DOR needed an occupational therapist to continue with its Mobility Evaluation Program operations and serve the unique needs of mobility-impaired persons. Therefore, the Contract was upheld under section 19130, subdivision (b)(3).

AFSCME filed a timely notice of intent to appeal the Executive Officer's decision. On September 15, 2025, AFSCME timely filed its opening brief wherein it contended that the

¹ All further statutory references are to the Government Code and are referred to as “section,” unless otherwise indicated.

Executive Officer erred in determining that DOR engaged in reasonable, good-faith efforts to recruit for the MES vacancy.

On September 29, 2025, DOR timely filed its Response to the appeal asserting that to fill the highly specialized MES vacancy, DOR undertook multiple recruitment efforts including consulting with the California Department of Human Resources (CalHR) and posting the position three times (January 12 and 27, 2022, and again on August 5, 2022). These efforts generated a total of 43 applications, but after careful review, none of the applicants met the minimum qualifications for the position.

On October 3, 2025, AFSCME timely filed its Reply to DOR's Response asserting, among other things, that DOR's recruitment efforts were woefully inadequate.

The case was thereafter re-designated as PSC No. 26-01 and submitted for oral argument before the Board during its regularly scheduled meeting on January 16, 2026. Because this case concerns an appeal from the Executive Officer's decision, the Executive Officer recused herself from any deliberation or discussion in this matter. The Legal Office was also recused as it assisted the Executive Officer in her decision-making process.

ISSUES

The following issues are before the Board for consideration:

- (1) Is DOR's contract for personal services with We Care authorized by section 19130, subdivision (b)(3)?

DISCUSSION

The California Supreme Court has acknowledged that Article VII of the California Constitution provides for an implied "civil service mandate," which requires that work that has historically and customarily been adequately and competently performed by civil service employees not be performed by private contractors. (*Professional Engineers in California Government v. Dept. of Transportation* (1997) 15 Cal.4th 543, 547.) This

mandate “emanates from an implicit necessity for protecting the policy of the organic civil service . . . against dissolution and destruction.” (*California State Employees Ass'n v. Williams* (1970) 7 Cal.App.3d 390, 397.)

The implied civil service mandate is not, however, without exceptions. Instead, in section 19130, the Legislature set forth exceptions to the implied civil service mandate that permit state entities to enter into personal services contracts with outside organizations. Under section 19130, subdivision (a), personal services contracts are permissible to achieve cost savings if certain stringent criteria are satisfied. Section 19130, subdivision (b) also provides ten non-cost-savings situations where personal services contracts are permissible. The agency seeking the personal services contract bears the burden of establishing that a section 19130 exemption applies. (*State Compensation Ins. Fund v. Riley* (1937) 9 Cal.2d 126, 134-135.)

At issue in this matter, is whether the Contract complies with subdivision (b)(3), which authorizes personal services contracts when: “The services contracted are [1] not available within civil service, [2] cannot be performed satisfactorily by civil service employees, or [3] are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.” Private contracting may be permissible in those situations where a state department is simply unable, despite reasonable, good-faith efforts to successfully recruit employees into existing classifications. (*In the Matter of the Appeal by Service Employees International Union, Local 1000 (California State Employees' Association)* (2005) PSC. No. 05-03, p. 9.) The unavailability of civil service employees cannot, however, have occurred as the result of a department creating an artificial need for contracting by refusing to hire sufficient civil service employees, and then relying upon the workforce shortage it has created to justify the hiring of private contractors. (*Ibid.*) Serious, irreversible consequences that could result

from precipitous action by the Board are relevant to the Board's review. (*Id.* at p. 10.)

We Care was contracted to perform clinical and behind-the-wheel assessments for DOR's Mobility Evaluation Program's High-Tech Driver Assessment Services Fee-for-Service program, which began in January 2023. DOR contracted with three licensed occupational therapists to avoid disrupting essential services to mobility-impaired individuals following the retirement of its sole MES in June 2021. Around the time of the prior MES's retirement, DOR contacted CalHR to discuss its concerns about the non-competitive salary for the MES position and how to attract a more diverse and competitive applicant pool. Ultimately, CalHR directed DOR to post the MES vacancy at the current salary level.

The Contract requires We Care to provide occupational therapy services from an Occupational Therapist, Registered, (OTR). The OTR is to conduct a clinical assessment of mobility-impaired clients and administer computerized and written tests to establish a client's cognition and visual perception skills. The OTR prepares written findings discussing the client's ability to drive or what adaptive equipment may be needed to enable the client to be a safe and independent driver. The OTR will also conduct behind-the-wheel evaluations, participate in meetings with DOR employees, and prepare a comprehensive report for the client.

DOR engaged in the following recruitment efforts:

- (1) shortly after the prior MES's retirement, it engaged in discussions with CalHR in an effort to address salary concerns and attract a more competitive and diverse applicant pool;
- (2) DOR posted and reposted the position on three occasions throughout 2022;
- (3) DOR received and screened 43 applications from individuals that did not meet the minimum qualifications of the position; and

(4) the hiring manager for the position frequently received calls from individuals lacking the required degree or certification.

DOR also contended that it is difficult to recruit an MES due to: (1) the minimum qualification requirement of two years of occupational therapy experience; (2) the expertise that an incumbent must have; and (3) the non-competitive salary offered for the position, despite DOR's attempt to work with CalHR on possible solutions.

AFSCME's concern regarding DOR's failure to perform outreach in an effort to expand the applicant pool is understandable. The concern must be juxtaposed against the need to avoid disrupting essential services to mobility-impaired individuals and the limited scope of the contract with We Care. It is true that in other contexts, the Board has cited to more robust recruiting efforts when a department sought to contract for services needed due to long-term, extensive vacancies. Although the civil servant that previously performed the type of work performed under the Contract retired in June 2021, the program under which We Care provides personal services did not begin until January 2023, around the time that the Contract was executed. The Board notes that during oral argument DOR confirmed that it is scheduled to attend career fairs to bolster its MES recruitment efforts. Nonetheless, the Board also echoes the caution included by the Executive Officer in her decision:

Notwithstanding this one-time approval of the contract, DOR must be mindful that the services contracted here are of the type that can capably be performed by a civil servant in the MES or Occupational Therapist classification[s]. DOR must exercise a good faith effort to have civil servants perform the job in lieu of simply opting for the convenience of contracting out the work. . . . DOR is urged to consider going beyond the mere posting of the job vacancy on the state's website. DOR [should] explore target[ed] recruiting, advertising on relevant professional websites, contacting occupation therapy programs at academic institutions, and other inventive methods of attracting qualified applicants.

If the class specifications or salary concerns are serious obstacles to recruiting, DOR should continue working with CalHR to remedy these

concerns. It is understood that DOR is not the final arbiter on specifications and salaries but relevant input from DOR about its recruitment difficulties may contribute to improvements in both categories.

For the above reasons, the Board finds that, under the circumstances, the evidence showed that DOR was unable, despite reasonable, good-faith efforts, to successfully recruit a civil servant for the MES vacancy. At the time that DOR contracted with We Care, the personal services could not be performed satisfactorily by civil service employees. DOR did not artificially create a need for the Contract by refusing to hire sufficient civil servants to provide services to mobility-impaired individuals. The three-year contract, which encumbered \$10,000.00, allowed DOR to continue to determine whether such individuals can safely drive, with or without adaptive equipment. For these reasons, the Executive Officer's determination that the Contract complied with the implied civil service mandate is upheld.

CONCLUSION

The Board finds that DOR submitted adequate information to show that the contract between DOR and We Care was authorized by section 19130, subdivision (b)(3). The Board, therefore, approves the contract.

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STATE PERSONNEL BOARD

Kathy Baldree, President
Kimiko Burton, Vice President
Dr. Gail Willis, Member
Ana Matosantos, Member
Shawnda Westly, Member

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I hereby certify that the State Personnel Board made and adopted the foregoing
Decision at its meeting on February 9, 2026.



Scott A. Sommerdorf
Attorney Supervisor
State Personnel Board