

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD  
4

5 CLARK COUNTY,

6 Petitioner,

) ITEM NO. 761

) CASE NO. A1-046016

8 )  
9 ) **ORDER**  
10 )  
11 )

12 For Complainant: Yolanda T. Givens, Esq., for Clark County

13 For Respondent: Michael A. Urban, Esq. and Jonathan Cohen, Esq., for Service Employees  
14 International Union, Local 1107.

15 This matter came on before the State of Nevada, Local Government Employee-  
16 Management Relations Board ("Board"), on June 14, 2011 for consideration and decision  
17 pursuant to the provisions of the Local Government Employee-Management Relations Act ("the  
18 Act"); NAC Chapter 288, NRS chapter 233B, and was properly noticed pursuant to Nevada's  
19 open meeting laws.

20 Clark County has petitioned this Board for a declaratory order regarding the scope of the  
21 prior Board decision in Burke v. County of Clark, EMRB Case No. A1-045900, Item No. 654A  
22 (2008). In Burke, the Board found that Clark County had committed a prohibited labor practice  
23 under NRS 288.270(1) by interfering with an employee's right to act for himself concerning the  
24 terms and conditions of his employment as guaranteed by NRS 288.140(2). The complainant in  
25 Burke was attempting to file and pursue a grievance independent of the recognized employee  
26 organization.<sup>1</sup> The complainant in Burke was not a member of the recognized bargaining agent  
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<sup>1</sup> An employee organization that has been recognized by a local government employer as the exclusive representative of all employees in a bargaining unit is a "bargaining agent." NRS 288.027.

1 for the unit to which he belonged. This Board concluded that the County's refusal to process the  
2 grievance did in fact interfere with the complainant's NRS 288.140(2) right to act for himself  
3 and did constitute a prohibited labor practice.

4 The County's petition claims that in the wake of our decision in Burke, a question has  
5 arisen between the County and the Service Employees International Union, Local 1107 (SEIU),  
6 one of the employee organizations which has been recognized by the County. Specifically, the  
7 County requests clarification regarding whether or not the same right to act for oneself by filing a  
8 grievance which was recognized in Burke also extends to employees who are members of the  
9 recognized employee organization.

10 SEIU has filed a response to the County's petition, arguing that the right to act for oneself  
11 does not extend to employees who are also members of the recognized organization.

12 NRS 288.140(2) states:

13 The recognition of an employee organization for  
14 negotiation, pursuant to this chapter, does not preclude  
15 any local government employee who is not a member  
16 of that employee organization from acting for himself  
17 or herself with respect to any condition of his or her  
18 employment, but any action taken on a request or in  
adjustment of a grievance shall be consistent with the  
terms of an applicable negotiated agreement, if any.

19 In Cone v. Nevada Service Employees Union, Local 1107, the Nevada Supreme Court  
20 addressed this same subsection and stated that it "...explicitly authorizes a nonunion member to  
21 act on his own behalf 'with respect to any condition of his employment.' This statute provides an  
22 individual with a right to forego union representation." 116 Nev. 473, 478, 998 P.2d 1178, 1181  
23 (2000). In the Burke decision, this Board relied upon this same passage from Cone.

24 In Fails v. City of Mesquite, EMRB Case No.: A1-045983, Item No. 739 (2011), this  
25 Board again considered the scope of the right to act for oneself contained in NRS 288.140(2). In  
26 specifically addressing this question, we stated: "The right to act for oneself is not universal and  
27  
28

1 this statutory subsection draws a distinction between employees who are members of a  
2 recognized employee organization and those who are not. The right to act for oneself is granted  
3 only to those employees who are not members of the recognized organization.” Fails, at p. 2.  
4 We concluded that as a member of a recognized bargaining agent, the right to act for oneself did  
5 not extend to the complainant in the Fails case. Fails at p. 3, Conclusion of Law # 3. Pursuant to  
6 NAC 288.410(3), we adopt the Fails decision as precedent to this case.<sup>2</sup> The plain language of  
7 the statute distinguishes between bargaining agent members and non-members.

8 Having considered the above, the Board unanimously finds as follows:

9 1. The Board has jurisdiction over Clark County’s Petition for Declaratory Order  
10 pursuant to NRS 288.110(2).

11 2. NRS 288.140(2) extends the right to act for oneself only to an employee who is  
12 not a member of a recognized employee organization.

13 3. The Board adopts its prior decision in Fails v. City of Mesquite, EMRB Case No.:  
14 A1-045983, Item No. 739 (2011) as precedent.

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27 <sup>2</sup> We note that as of the date of this order, a petition for judicial review of the Fails decision remains pending,  
28 however the decision remains valid and lawful even during the pendency of such a petition. NRS 233B.135(2).

**ORDER**

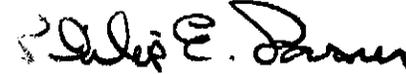
The Board hereby declares that NRS 288.140(2) does not grant the right to a local government employee to act for oneself with respect to any condition of his or her employment when the local government employee is also a member of the organization which has been recognized as the bargaining agent.

DATED this 22nd day of June, 2011.

LOCAL GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

BY:   
SEATON J. CURRAN, ESQ., Chairman

BY:   
SANDRA MASTERS, Vice-Chairman

BY:   
PHILIP E. LARSON, Board Member

1 STATE OF NEVADA  
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT  
3 RELATIONS BOARD  
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5 CLARK COUNTY, )

6 Petitioner, )

7 CASE NO. A1-046016  
8 )

9 **NOTICE OF ENTRY OF ORDER**  
10 )  
11 )

12 To: Yolanda T. Givens, Esq., for Clark County

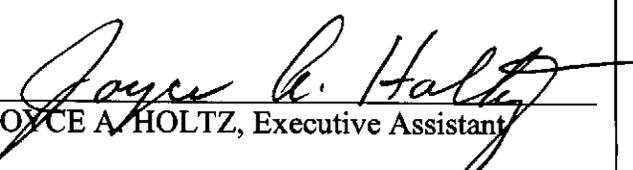
13 To: Michael A. Urban, Esq. and Jonathan Cohen, Esq., for Service Employees  
14 International Union, Local 1107.

15 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on  
16 June 22, 2011.

17 A copy of said order is attached hereto.

18 DATED this 22nd day of June, 2011.

19 LOCAL GOVERNMENT EMPLOYEE-  
20 MANAGEMENT RELATIONS BOARD

21 BY   
22 JOYCE A. HOLTZ, Executive Assistant  
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