STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

DONALD MUNN, Complainant, vs. CLARK COUNTY FIREFIGHERS IAFF LOCAL 1908 INTERNATIONAL ASSOCIATION OF FIREFIGHTERS; CLARK COUNTY, ex. Rel. Fire Department DOES I thru V, inclusive; ROE CORPORATIONS, I thru V, Inclusive, Respondents,	ITEM: 781 CASE NO. A1-046045 **ORDER**

For Complainant: Donald Munn and his attorney Andrew L. Rempfer, Esq.

For Respondent: Clark County Firefighters IAFF Local 1908 International Association of Firefighters; and their attorney W. David Holsberry, Esq.

For Respondent: Clark County, ex. Rel. Fire Department DOES I thru V, inclusive; ROE Corporations I thru V, Inclusive and their attorney Yolanda T. Givens, Esq

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") on September 13, 2012 for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter **288**, NRS chapter 233B, and was properly noticed pursuant to Nevada's open meeting laws.

Under the limited deferral doctrine set forth in City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 59 P.3d 1212 (2002), the Board will defer to the parties' arbitration proceedings if (1) the arbitration proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the Act; (4) the contractual issue was factually parallel to the prohibited labor practice issue; and (5) the arbitrator was presented generally with the facts relevant to resolving the prohibited labor practice issue. Id. at 896, 59 P.3d at 1217.

Following conclusion of arbitration proceedings and the subsequent report of proceedings submitted to the Board, we allowed Complainant Donald Munn the opportunity to brief the applicability of the limited deferral doctrine to this case.

Munn objected to this opportunity by characterizing the limited deferral doctrine as an affirmative defense. The limited deferral doctrine is a prudential doctrine that gives effect to the noted public policy of encouraging resolution of disputes under the bargained-for grievance procedures. The purpose of this Board is to give effect to the public policy encapsulated in the Act. Therefore it is appropriate for the Board to request the parties to address this issue before proceeding further in this case.

Additionally we note that under Board precedent the burden to establish an affirmative defense has always been placed upon a respondent. See Laborers Int'l Union of North America, Local 169 v. Washoe Medical Center, Item No. 1 (1970). In contrast the burden to establish that the limited deferral doctrine should not apply is placed upon the party desiring the Board to reject the arbitration award and move forward with the prohibited labor practice proceedings. City of Reno at 896, 59 P.3d at 1217. Munn has taken the position that the prohibited labor practice proceedings should continue, therefore Munn unmistakably bears the burden to show the non-applicability of the limited deferral doctrine under City of Reno.

Munn argues that the limited deferral doctrine does not apply as to Respondent International Association of Firefighters, Local 1908 (Local 1908). The Board agrees with Munn. Munn argues that Local 1908 was not a party to the arbitration proceedings therefore satisfying one of the exceptions to deferral set forth in City of Reno. This contention is supported by the arbitrator's award and is not disputed by Local 1908 in the statement that Local 1908 filed on September 10, 2012. Munn also argues that the arbitrator's decision considered and decided issues relating to Clark County's treatment of Munn and whether the County had just cause to terminate Munn, but did not consider facts relating to the alleged breach of the duty of fair representation. The arbitrator's decision does not appear to have been based upon facts that are parallel and relevant to Munn's claims against Local 1908. This too constitutes grounds to exempt Munn's claims against Local 1908 from the limited deferral doctrine under City of Reno.

Therefore the Board finds the limited deferral doctrine to be inapplicable to Munn's claims against Local 1908.

Munn also argues that the limited deferral doctrine does not apply to Respondent Clark County. Munn argues that only the just cause issue was argued before the arbitrator and issues relating to whether or not the County properly processed Munn's benefits under Article 16 and 31 of the collective bargaining agreement were not before the arbitrator. This is not sufficient for Munn to meet his burden to demonstrate the non-applicability of the limited deferral doctrine, principally because these claims allege breaches of an agreement as opposed to a breach of the Act and therefore fall beyond the jurisdiction of this Board. See UMC Physicians' Bargaining Unit of Nevada Service Employees Union v. Nevada Service Employees Union/SEIU Local 1107, AFL-CIO, 124 Nev. 84, 90, 178 P.3d 709, 713 (2008) (Board's jurisdiction limited to "...hearing complaints . . . arising out of NRS Chapter 288's performance or interpretation"). Accordingly, this argument has no bearing on the applicability of the limited deferral doctrine. As Munn has not met his burden as to the County, the Board will defer to the arbitrator's award against the County and dismiss the County from this proceeding as required by City of Reno.

Having considered the foregoing the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On May 16, 2012 Complainant Donald Munn notified the Board of an arbitration decision in his favor.

2. The parties to the arbitration proceeding were Munn and Clark County (identified as Clark County Fire Department).

3. Local 1908 was not a party to the arbitration proceedings.

4. If any of the foregoing findings is more appropriately construed a conclusion of law, it may be so construed.

CONCLUSIONS OF LAW

1. Pursuant to City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 59 P.3d 1212 (2002), the Board generally defers to arbitration awards.

2. The Board presumes that deferral is appropriate unless established otherwise.

3. The burden to demonstrate why the Board should not defer to the arbitrator's award falls on the party desiring further proceedings before the Board.

4. Munn has met the burden to establish that the Board should not defer to the arbitrator's award regarding Munn's claims against Local 1908.

5. The factual issues considered and decided by the arbitrator are not factually parallel to the issues raised in Munn's complaint against Local 1908

6. As Local 1908 was not a party to the arbitration proceedings and as the issues in the arbitration proceedings are not factually parallel to the issues in Munn's complaint before the Board, the limited deferral doctrine does not apply to Munn's claims against Local 1908.

7. Munn has not met the burden to show that the Board should not defer to the arbitrator's decision regarding Respondent Clark County.

8. Munn's arguments concerning alleged breaches of the collective bargaining agreement are not relevant to the question of the limited deferral doctrine's applicability.

9. Deferral to the arbitrator's award regarding Clark County is appropriate.

10. If any of the foregoing conclusions is more appropriately construed a finding of fact, it may be so construed.

ORDER

Based upon the foregoing, it is hereby ordered that Respondent Clark County only is dismissed from this proceeding.

DATED this 24th day of September, 2012.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: Philip E. Larson

PHILIP E. LARSON, Vice-Chairman

BY: Sandra Masters

SANDRA MASTERS, Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

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To: Donald Munn and his attorney Andrew L. Rempfer, Esq.

To: Clark County Firefighters IAFF Local 1908 International Association of Firefighters; and their attorney W.David Holsberry, Esq.

To: Clark County, ex. Rel. Fire Department DOES I thru V, inclusive; ROE Corporations, I thru V, Inclusive and their attorney Yolanda T Givens, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on September 24, 2012.

A copy of said order is attached hereto.

DATED this 24th day of September, 2012.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY Joyce A. Holtz

JOYCE A. HOLTZ, Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 24th day of September, 2012, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Andrew L. Rempfer, Esq.
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JOYCE HOLTZ, Executive Assistant