STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

THOMAS D. RICHARDS, Complainant, vs. POLICE MANAGERS AND SUPERVISORS ASSOCIATION, Respondent.	ITEM: 788 CASE NO. A1-046094 **ORDER**

For Complainant: Thomas D. Richards

For Respondent: Police Managers and Supervisors Association and their attorney John P. Aldrich, Esq.

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on August 13, 2013 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.

Respondent Las Vegas Police Managers & Supervisors Association ("LVPMSA") seeks dismissal of this complaint under NAC 288.375. LVPMSA argues that the complaint lacks probable cause which justifies dismissal under NAC 288.375(1) and that the complaint is a spurious or frivolous complaint under NAC 288.375(5).

Complainant Thomas Richards has filed an opposition to LVPMSA's motion to dismiss, arguing that he has demonstrated probable cause for the complaint.

The upshot of the complaint is that Richards is charging LVPMSA with breaching the duty that it owed to the employees in the unit that it represents. The complaint alleges that

LVPMSA negotiated provisions that are harmful to the employees that LVPMSA represents. Specifically, LVPMSA agreed with Richards' employer, the Las Vegas Metropolitan Police Department ("Metro"), to a suspension of merit increases that would have otherwise been required under the collective bargaining agreement. Richards also asserts that LVPMSA did not present this information to its members and that LVPMSA does not have the authority to agree to a modification of the collective bargaining agreement without a public hearing or its members consent. Taking Richards factual allegations to be true for purposes of this motion, we agree that the complaint lacks probable cause, and should be dismissed under NAC 288.375(1).

As to the first assertion, that LVPMSA agreed to a suspension of the merit increases with Metro, we find that this assertion lacks probable cause. Based upon Richards' own allegations it appears that in this scenario LVPMSA and the Department did precisely what the Act envisions – they negotiated to an agreement over the issue of merit pay increases. In Las Vegas Police Protective Ass'n , Metro, Inc. v. City of Las Vegas, Item No. 248, EMRB Case No. A1-045461 (Aug. 15, 1990), this Board recognized that collective bargaining is an ongoing process and involves day to day adjustment in the contract and in the working rules. Id. (citing to Conley v. Gibson, 355 U.S. 41 (1957)). Thus a collective bargaining agreement may be modified during its term so long as the modification is bargained-for and agreed-upon between the employer and bargaining agent.[1]

The declaration of John Hayes submitted by LVMPSA indicates that the modification was a cost-saving measure agreed to during negotiations between LVPMSA and Metro. While Richards asserts that this concession by LVMPSA was harmful to the employees represented by

[1] LVPMSA appears to take the position that the suspension of merit pay increases was the original intent of the agreement and not a modification, however for purposes of this motion we accept the factual allegations stated by Richards.

LVPMSA, and we assume this to be the case, a harmful effect, standing alone, does not indicate a breach of the duty of fair representation. The nature of collective bargaining is a give-and-take process which typically includes concessions from both the bargaining agent and the local government employer. Richards does not offer any indication that this concession was arbitrary, discriminatory or dishonest. Weiner v. Beatty, 121 Nev. 243, 249, 116 P.3d 829, 832-833 (2005) (stating the standards relating to a bargaining agent's duty of fair representation). Thus, there is no probable cause to support Richards' allegations that LVPMSA breached a duty owed to the employees in the unit merely by agreeing to a suspension of pay increases.

Richards also asserts that LVPMSA did not present the suspension of merit pay increases to its membership for review and ratification at a public meeting. However, there is no provision within the Act that requires a bargaining agent to submit the terms of an agreement to its membership before it can agree to them. This Board has previously held that the method by which a union ratifies a collective bargaining agreement with its members is an internal union matter and is not within the purview of this Board. International Ass'n of Firefighters, Local 1883 v. City of Henderson, Item No. 239, EMRB Case No. A1-045455 (Feb. 23, 1990). The public meeting requirement mentioned by Richards cannot constitute probable cause against LVPMSA because that requirement pertains to local government employers. See NRS 288.153.

Therefore, we conclude that the complaint is not supported by probable cause and that dismissal under NAC 288.375(1) is appropriate. Given this resolution, it is not necessary to consider LVPMSA's other argument that the complaint was spurious or frivolous.

Having considered the above, the Board finds and concludes as follows:

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FINDINGS OF FACT

1. Complainant Thomas D. Richards is a local government employee employed by the Las Vegas Metropolitan Police Department and a member of the bargaining unit represented by LVPMSA.

2. LVPMSA and Metro and parties to a collective bargaining agreement.

3. LVPMSA and Metro negotiated to suspend annual merit increases as a cost-saving measure.

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 NRS 288.110(2) and NRS 288.280, the Board has exclusive jurisdiction over violations of NRS Chapter 288.

2. A recognized bargaining agent owes a duty of fair representation to the employees that it represents when the bargaining agent negotiates the terms of a collective bargaining agreement.

3. Complainant has not offered any evidence or argument that LVPMSA's concession to Metro on the suspension of merit increases was arbitrary.

4. Complainant has not offered any evidence or argument that LVPMSA's concession to Metro on the suspension of merit increases was discriminatory.

5. Complainant has not offered any evidence or argument that LVPMSA's concession to Metro on the suspension of merit increases was in bad faith.

6. There is no probable cause to support an allegation that LVPMSA breached its duty of fair representation in this instance.

7. The processes and interaction between a bargaining agent and its members for obtaining consent or ratification of a collective bargaining agreement is an internal union matter and is beyond the scope of this Board's authority.

8. Pursuant to NRS 288.110(5), the Board adopts its prior decisions, which are stated above, as precedent.

9. The complaint is not supported by probable cause and dismissal is appropriate pursuant to NAC 288.375(1).

10. An award of costs under NRS 288.110(6) is not warranted in this proceeding.

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

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ORDER

Based upon the foregoing, and good cause appearing therefore:

IT IS HEREBY ORDERED that Respondent Las Vegas Police Managers and Supervisors Association's motion to dismiss is granted and this matter is dismissed;

IT IS FURTHER ORDERED that each party shall bear its own fees and costs.

DATED this 19th day of August, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
PHILIP E. LARSON, Chairman

BY: _____
SANDRA MASTERS, Vice-Chairman

BY: _____
BRENT ECKERSLEY, ESQ., Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

THOMAS D. RICHARDS, Complainant, vs. POLICE MANAGERS AND SUPERVISORS ASSOCIATION, Respondent.	CASE NO. A1-046094 **NOTICE OF ENTRY OF ORDER**

To: Thomas D. Richards

To: Police Managers and Supervisors Association and their attorney John P. Aldrich, Esq..

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on August 19, 2013.

A copy of said order is attached hereto.

DATED this 19th day of August, 2013.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY Yvonne Martinez
YVONNE MARTINEZ, 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 19th day of August, 2013, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Thomas D. Richards
1541 Avenida Fiesta
North Las Vegas, NV 89031

John P. Aldrich, Esq.
Catherine Hernandez, Esq.
Aldrich Law Firm, LTD.
1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146

Yvonne Martinez

YVONNE MARTINEZ, Executive Assistant