STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

DOUGLAS COUNTY SUPPORT STAFF ORGANIZATION, Complainant, vs. DOUGLAS COUNTY SCHOOL DISTRICT, Respondent.	CASE NO. A1-046105 ITEM NO. 797 **ORDER**

For Complainant: Douglas County Support Staff Organization and their attorney Sandra G. Lawrence, Esq.

For Respondent: Douglas County School District and their attorney Rick R. Hsu, Esq.

On the 6th day of November, 2014, this matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act") NRS Chapter 288 and was properly noticed pursuant to Nevada's Administrative Procedures Act. The Board held an administrative hearing on this matter on September 11, 2014 in Carson City, Nevada. By agreement the parties submitted post-hearing briefs in lieu of closing arguments.

The Douglas County Support Staff Organization (the "Organization") is the bargaining agent for classified employees of the Douglas County School District ("District"). The District and the Organization have negotiated a collective bargaining agreement covering the time period from 2011 to 2013. That agreement establishes classes of employees based upon the number of days attached to a contracted position. The agreement allows for some employees to be 9-month

employees, others to be 10-month employees and others still to be 11 or 12-month employees. It is under this agreement that the dispute arises in this case.

Nancy Hamlett is a Secretary II for the School District and one of the employees whose employment is subject to the terms of the collective bargaining agreement. Ms. Hamlett was employed as 12-month (260-day) employee. On May 1, 2013 the school district informed Ms. Hamlett that beginning on July 1, 2013 her position would be reduced to an 11-month, (220-day) position, reflecting an adjustment to her summer duties. The consequence of this reduction was a loss of 40 work days' worth of compensation and benefits.

The Organization asserts this action to be a unilateral change, claiming that the District did not first negotiate over Ms. Hamlett's reduction to an 11-month employee with the Organization.

The contours of a unilateral change claim have been well-established by this Board. A unilateral change to a mandatory subject of bargaining is a prohibited labor practice and has long been considered by this Board as a *per se* refusal to bargain. e.g. Las Vegas Police Protective Association Metro Inc. v. City of Las Vegas, Item No. 248, EMRB Case No. A1-045461 (Aug. 15, 1990). A finding of unilateral change is intended to protect the integrity of the bargaining process and safeguard the role of the bargaining agent in that process. Id. Conversely, where an employer adheres to the bargained-for terms of a collective bargaining agreement no unilateral change occurs. Bisch v. Las Vegas Metropolitan Police Department, 302 P.3d 1108, 1116 n. 5 (2013).

There is no question that a reduction in work days concerns a mandatory subject of bargaining. NRS 288.150(2)(h) identifies as a mandatory subject of bargaining the "[t]otal number of days' work required of an employee in a work year." The District contends that in fact

it did negotiate with the Organization on this subject and that the outcome of those negotiations is memorialized in Article 7-11 of the collective bargaining agreement. The District asserts that Article 7-11 grants it standing license to decrease the number of hours in a work year for any support staff employee.

A party that adheres to the terms of a collective bargaining agreement does not commit a unilateral change for the self-evident reason that nothing is actually being changed from what has been negotiated. Thus, whether the negotiated Article 7-11 permitted the school district to reduce Ms. Hamlett's hours is an essential question to resolving this matter. We agree with the District that it did, and so find no unilateral change by the District.

The language of Article 7-11 states: "A reduction in the number of hours in a day or days in a contract year for which a Support Staff Employee is contracted to work shall not constitute a lay-off." At the hearing the District presented evidence as to both the intent behind this article and how the article has been historically applied in the dealings between the District and the Organization. The language in Article 7-11 has appeared and passed through successive agreements, dating back to the 1993-1994 agreement. In that first instantiation the article applied only to food services workers, but in 2000 was modified to include any support staff employee. The article has remained unchanged in successor agreements, including the 2011-2013 agreement at issue in this case. At the hearing before the Board, Rich Alexander, the District's former Superintendent for Human Resources, testified as to the intention behind this article. That intention was to allow the District to position its classified work force as needed in response to changing conditions such as enrollments, budgets and special needs without having to resort to the drastic step of laying off employees.

///

Even more significantly, Mr. Alexander testified that Article 7-11 has been historically applied in that manner nearly every year since at least 2002 when he began working for the District. Mr. Alexander explained that in the earlier years of the preceding decade it was mainly applied to reduce the number of hours in a day, but by about 2008 student enrollment in the District's schools began to decline and the article began to be applied in a more drastic way that began to include adjustments to the number of days in a work year. Mr. Alexander's testimony was credible. It is further corroborated by a 2010 decision from an arbitrator named Catherine Harris in a grievance proceeding over the same issue who found that the agreement had been previously applied in this manner. Arbitrator Harris' decision was introduced into evidence at the hearing. Further evidence at the hearing showed that in the next negotiating sessions following the Harris decision, the Organization proposed a change to Article 7-11, but ultimately that change was not accepted in the final bargained-for agreement.

The Organization argued that the District's action was outside the scope of Article 7-11 because that article concerns only lay-offs. But that is not immediately clear from the plain language of the article, and the District's unrefuted testimony about the parties' course of conduct in implementing Article 7-11 removes any doubt in our minds that the District was only implementing what it had bargained for in the agreement when it reduced Ms. Hamlett to an 11-month employee.

Based upon the foregoing the Board finds and concludes as follows:

FINDINGS OF FACT

1. The Douglas County School District and the Douglas County Support Staff Organization were parties to a collective bargaining agreement for the 2011-2013 time period.

///

2. The collective bargaining agreement covers the bargaining unit of classified employees of the Douglas County School District.

3. Article 7-11 of the collective bargaining agreement states "[a] reduction in the number of hours in a day or days in a contract year for which a Support Staff Employee is contracted to work shall not constitute a lay-off."

4. The language in Article 7-11 applying to classified employees has appeared in the successive agreements dating back to the year 2000, and beyond that has applied to food service workers dating back to 1993.

5. Nancy Hamlett is a Secretary II with the Douglas County School District and a member of the bargaining unit covered by the collective bargaining agreement.

6. On May 1, 2013 the School District informed Nancy Hamlett that her position would be reduced from a 12-month position to an 11-month position.

7. As a result of the reduction to an 11-month position, Nancy Hamlett's pay and benefits were reduced during the 2013-2014 fiscal year.

8. Since at least 2002, the District and the Organization have applied the language in Article 7-11 to permit the school district to reduce employee hours without separate negotiations with the Organization.

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

CONCLUSIONS OF LAW

1. The Board is authorized to hear and determine complaints arising under the Local Government Employee-Management Relations Act.

/ / /

2. The Board has exclusive jurisdiction over the parties and the subject matters of the Complaint on file herein pursuant to the provisions of the Act.

3. The number of hours in a work year is a mandatory subject of bargaining

4. The Board may interpret a collective bargaining agreement when necessary to determine a prohibited labor practice charge.

5. When interpreting the terms of a collective bargaining agreement the parties' subsequent conduct in implementing a term of the agreement is probative as to the intent of the agreement.

6. The parties' subsequent conduct since at least 2002 in implementing Article 7-11 confirms that the article permits the School District to reduce the number of hours in a work year without negotiating each reduction with the Organization.

7. The District has bargained with the Organization over the number of hours in a work year and acted pursuant to the negotiated terms of Article 7-11 when it reduced Ms. Hamlett to an 11-month employee. In doing so, the District did not change any negotiated term of employment.

8. The Organization did not establish by a preponderance of evidence that the District has committed a prohibited labor practice in this matter.

9. The complaint against the District is not well-taken.

10. Although the District is the prevailing party, an award of costs pursuant to NRS 288.110(6) is not warranted in this case.

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

///

ORDER

Based upon the foregoing and for the reasons stated above, it is hereby ordered that the Board finds in favor of Douglas County School District;

It is further ordered that each party shall bear its own fees and costs incurred in this matter.

DATED this 25th day of November, 2014.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: _____
PHILIP E. LARSON, Chairman

BY: _____
BRENT ECKERSLEY, ESQ., Vice-Chairman

BY: _____
SANDRA MASTERS, Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

DOUGLAS COUNTY SUPPORT STAFF ORGANIZATION, Complainant, vs. DOUGLAS COUNTY SCHOOL DISTRICT, Respondent.	CASE NO. A1-046105 ITEM NO. 797 **NOTICE OF ENTRY OF ORDER**

To: Douglas County Support Staff Organization and their attorney Sandra G. Lawrence, Esq.

To: Douglas County School District and their attorney Rick R. Hsu, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on November 25, 2014.

A copy of said order is attached hereto.

DATED this 25th day of November, 2014.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY _____
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 25th day of November, 2014, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Sandra G. Lawrence, Esq.
Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, NV 89703

Rick R. Hsu, Esq.
Maupin, Cox & LeGoy
Attorneys at Law
PO Box 30000
Reno, NV 89520

YVONNE MARTINEZ, Executive Assistant