STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

NICHOLAS EASON, Complainant, vs. CLARK COUNTY, Respondent.	CASE NO. A1-046109 ITEM NO. 798 **ORDER**

For Complainant: Nicholas Eason and his attorney Adam Levine, Esq.

For Respondent: Clark County and their attorney Yolanda T. Givens, Esq.

On the 14th 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.

Complainant Nicholas Eason brings three allegations of a prohibited labor practice against Respondent Clark County. Eason asserts that the County interfered, coerced or restrained his rights in violation of NRS 288.270(1)(a), that the County engaged in unlawful direct dealing and that the County unilaterally changed a mandatory subject of bargaining.

Nicholas Eason began employment as a firefighter with Clark County on July 23, 2012. One requirement of that position is to obtain the necessary EMT certifications. Clark County

requires that its firefighters achieve a level of EMT-I (intermediate)[1] for its firefighters, and so specified that requirement when it offered employment to Mr. Eason. There are three levels of EMT certification: EMT-Basic, EMT-I and EMT-P. The Board heard evidence that the lower level EMT certifications are effectively pre-requisites to obtaining a higher level. Thus an individual must first pass off EMT-Basic before obtaining EMT-I certification. At the time that Mr. Eason accepted employment with Clark County he had not yet achieved any level of EMT certification, but this did not preclude his employment. The County has adopted a merit personnel system that establishes a one-year probationary period. The probationary period of one year is also reflected in the collective bargaining agreement between the County and the International Association of Firefighters, Local 1908. The County allowed Mr. Eason to obtain the necessary certifications including EMT-I during this probationary period.

Newly hired firefighters with the County first must pass through initial training called rookie school. The rookie school is a physically demanding course intended to immerse new firefighters into the job duties of a firefighter by teaching and testing on the skills of the job. As part of rookie school Eason and his classmates were given a handbook of instructions, which included an admonition not to perform any outside training for the duration of the rookie school. Eason successfully completed rookie school in December of 2012.

Eason began work on obtaining his EMT-Basic certification upon completion of rookie school in January of 2013. The collective bargaining agreement between the County and Local 1908 specifies that the County covers the expenses of training for required certifications and the County did arrange for Eason to attend an EMT-Basic course through the EMS Training Center of Southern Nevada. The EMT-Basic course lasted from January 4, 2013 to July 5, 2013. At the

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[1] The Board heard evidence that the designation of this level has since changed to EMT-A (advanced). For purposes of clarity, throughout this decision we will refer this certification level as EMT-I.

conclusion of the course, Eason passed his EMT-Basic course and shortly thereafter received his EMT-Basic certificate.

As of July of 2013, the County found itself in the unwelcome position that Mr. Eason was on the cusp of completing his probationary status, but so without having obtained the necessary EMT-I certification. At the hearing Fire Chief Bertral Washington testified that this was a unique circumstance as the County had only recently begun the practice of accepting firefighter applicants that did not already possesses EMT certifications and allowing those employees to obtain the necessary certifications on the job after being hired. Chief Washington expressed some frustration that the County had not developed and implemented a training plan that would have allowed Mr. Eason to be able to train and obtain both his EMT-Basic and EMT-I certifications within the probationary period.

The County's solution to this dilemma was to approach Eason (and one other firefighter who was in the same predicament) and agree to an arrangement that would extend their employment for four months to allow them to obtain the EMT-I certification. On the eve of Eason's one-year anniversary of employment, the County entered into an "Amended Condition of Employment" agreement with Mr. Eason. That agreement states: "The Clark County Fire Department was unable to arrange/schedule/secure EMT-I training for Nicholas Eason within 12 months from the date of his Condition of Employment Agreement. Therefore Clark County Fire Department will extend employee four (4) months from the date of this Amendment to obtain the EMT-A (in lieu of EMT-I) Certification." That same document also required Eason to expressly waive his future right to file a grievance if he were to be terminated for failing to obtain his EMT-I certificate within the four months. The document was signed by Eason, Chief Washington and Local 1908 Vice President Mike Afanasiv. Mr. Afansiv was present as a witness representing Local 1908.

The County then arranged for an accelerated EMT-I course for Mr. Eason. At the end of the four months Eason had not completed his EMT-I certification.

On November 22, 2013 Eason met with Deputy Chief Jon Klassen, and was informed that if he were terminated, as opposed to resigning, it would be something that would be considered should Eason re-apply to Clark County or apply to other fire departments. At that meeting Eason produced an unsigned letter of resignation, but was informed by the County that it was unacceptable, due to language indicating that Eason would like a second chance and a place in the County's next rookie school. Under the direction of Chief Klassen, Eason then drafted a second resignation letter on the spot in Chief Klassen's office that omitted the reference to the next rookie school. The County accepted this second letter and Eason's employment with the County concluded that same day.

Eason first alleges in this matter that the County's actions at the July 22, 2013 meeting and the ensuing Amended Conditions of Employment agreement were in violation of NRS 288.270(1)(a). This subsection states that it is a prohibited labor practice to interfere, coerce or restrain an employee in the exercise of any right guaranteed under the Act. We find that the County's actions in this case did not coerce Mr. Eason concerning his rights under the Act. The unfortunate reality of the situation at that time was that Mr. Eason did not have the required certification, and as a probationary employee he could have been dismissed on that basis alone at the July 22, 2013 meeting. The certifications are vital and as of July 22, 2013 Eason had no apparent options to continue his career as a Clark County firefighter. But in that meeting the County gave him one by giving him the additional four months to obtain his EMT-I certification. In this, we do not see any coercion by the County. And even though the County required Eason to waive his right to file a grievance should he be terminated for failing to obtain the

ertification, we do not see any meaningful distinction between this action and a last-chance type of agreement. Therefore we do not see a prohibited labor practice under NRS 288.270(1)(a).

Nor do we see a violation of NRS 288.270(1)(a) arising out of the subsequent November 22, 2013 meeting. Pursuant to the Amended Employment Agreement that Eason had previously accepted, he agreed that he would have his EMT-I certification by November 22, 2013 or be terminated. He decided at that point to resign in order to best further his career. While the terms of the resignation were not truly voluntary, that alone does not rise to the level of a prohibited labor practice under NRS 288.270(1)(a). Eason points to a prior decision of this Board in Spannbauer v. City of North Las Vegas, Item No. 636C, EMRB Case No. A1-045885 (June 25, 2008), and urges the Board to find a prohibited labor practice based upon the coerced resignation that occurred in Spannbauer. But this case is distinguishable from Spannbauer. Spannbauer does not say that a coerced resignation is a *per se* violation of NRS 288.270(1)(a). Notably, the coerced resignation in Spannbauer was coupled with misrepresentations that the officer in that case could be non-confirmed rather than have recourse to his grievance rights. In this case, there was no evidence of any dishonesty by the County concerning Eason's right to file a grievance. His inability to bring a grievance had been established by the Amended Condition of Employment Agreement. Additionally, when this Board found that resignation was thrust upon the police officer in Spannbauer, it was in finding a predicate adverse employment action necessary for a claim of discrimination based upon sex. In this case, the County could have terminated Eason of its own accord for failing to obtain the required certification. That the County did so by means of an involuntary resignation, as opposed to simply terminating him, does not, in and of itself, establish a violation of NRS 288.270(1)(a).

Eason claims that the County engaged in unlawful direct dealing, or end run bargaining, when it met directly with him on July 22, 2013 to establish certain terms of his employment

including the four month extension of time to obtain his certification in exchange for his waiving his right to file a grievance. While direct dealing is a prohibited labor practice under the Act, not every communication with an employee equates with direct dealing. Direct dealing is predicated upon an employer bypassing the recognized union and bargaining directly with represented employees.[2] A complainant can show direct dealing by establishing that (1) the employer communicated with represented employees, (2) that the purpose of the communication was either to establish a change to a mandatory subject of bargaining or to undercut the bargaining agent's role in negotiations; and (3) the communications were made without notice or to the exclusion of the bargaining agent. Las Vegas Firefighters Local 1285 v. City of Las Vegas, Item No. 786, EMRB Case No. A1-046074 (May 21, 2013). In this case the County's communications at the July 22, 2013 meeting with Eason were not made to the exclusion of Local 1908. The evidence at the hearing established that Mike Afonasiv was present throughout that meeting and that he was there in his capacity as a representative of Local 1908. It is significant that Mr. Afonasiv was also a signatory to the Amended Condition of Employment agreement. Given these facts, we cannot find that the communications were made to the exclusion of Local 1908. This is sufficient to defeat the claim of direct dealing. We also note that the purpose of the communications was not to undercut Local 1908's role as the bargaining agent. The purpose was to correct the problem that the County had created by not affording Eason sufficient time to obtain his certifications.

Finally Eason claims a unilateral change on the part of the County because the County did not follow the bargained-for process to discharge a post-probationary employee. Eason argues that under the collective bargaining agreement, a post-probationary employee such as

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[2] It is immaterial that Eason was not a member of Local 1908 because a bargaining agent represents all employees in a bargaining unit in bargaining matters. NRS 288.027.

himself[3] could not have been terminated except for cause, and that any such termination requires certain procedures include 5 days advance notice and the ability to request a hearing to challenge his termination.

The discharge process is unquestionably a mandatory subject of bargaining. NRS 288.150(2)(i), and the collective bargaining agreement does call for the 5-day notice and the hearing procedure identified by Eason in order to terminate a firefighter's employment. While the Amended Condition of Employment agreement did state that the County could terminate Eason for failing to obtain his certification, it did not purport to change the terms of how the County could go about doing so. The County claims the procedure was inapplicable because Eason resigned. We disagree. We do not find, for the limited purposes of this case, that Eason voluntarily resigned. Instead, the evidence at the hearing established that when Eason offered his resignation letter, the County rejected it, and only accepted the second resignation letter after Chief Klassen had indicated to Eason what the contents of the letter must be. Eason testified at the hearing that the contents of the second resignation letter were not his words. Where the County imposed the terms of the resignation we find the resignation to be an involuntary resignation. As Eason did not voluntarily resign, and as he was post-probationary at that point, the County should have either accepted Eason's attempt to voluntarily resign or used the bargained-for discharge procedure in the collective bargaining agreement to end his employment. But the fact that the County did not follow the correct process in this single instance does not establish that a prohibited labor practice occurred.

A unilateral change occurs where an employer changes the terms of employment relating to a mandatory subject of bargaining and does so without first bargaining in good faith with the recognized bargaining agent. City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 899,

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[3] At the hearing the County agreed that Eason had completed probation prior to the November 22, 2013 meeting.

59 P.3d 1212, 1219 (2002). A unilateral change is a prohibited labor practice because it amounts to a rejection of the most basic of collective bargaining principles. See Sea Bay Manor Home, 253 NLRB 739 (1980). While a unilateral change may factually align with allegations of a breach of contract, see City of Reno, one distinguishing feature between a breach of contract and a unilateral change is that under a unilateral change, the employer's action go beyond an isolated breach of the agreement and imposes a generalized effect or continuing impact upon bargaining unit members. Grant District Education Association v. Grant Joint Union High School District, California PERB Decision No. 196, Case No. S-CE-366 (Feb. 26, 1982). This Board has consistently recognized that disputes asserting only a breach of the agreement, and which do not rise to the level of a prohibited labor practice, are beyond our authority. Reno Police Protective Association v. City of Reno, Item No. 16, EMRB Case No. 18273, (Aug. 16, 1974)

In this case, the County's actions do not reflect a generalized effect or change to the bargained-for terms of the collective bargaining agreement. The evidence at the hearing established that Mr. Eason's situation was entirely unique and the County was trying to cope with these new developments. The County had only just begun hiring firefighters who did not already possess certifications, and the County was attempting to figure out the logistics for its new hires to complete all the required certifications within the probationary period. It was these unique circumstances, as well as the terms of the Amended Condition of Employment, which applied only to Eason and only in the singular circumstance that Eason had not obtained the EMT-I certification, that led to Eason's dismissal. We see no evidence of any sort of broader application to any employee in the bargaining unit other than Mr. Eason. Consequently under the evidence presented in this case we see no conduct by the County that transcends a mere breach of the agreement and rises to the level of a unilateral change.

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The Board has determined that an award of costs to the prevailing party is not appropriate in this case and that each party shall therefore bear its own fees and costs. NRS 288.110(6).

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

FINDINGS OF FACT

1. Complainant Nicholas Eason was a local government employee and was employed by Clark County as a firefighter beginning on July 23, 2012.

2. The position of firefighter is in a bargaining unit represented by the International Association of Firefighters, Local 1908.

3. The County requires its firefighters to maintain a minimum EMT certification level of EMT-I.

4. At the time Eason was hired by the County he did not have any EMT certifications. The County's offer of employment specified that Eason was to obtain his EMT-I certification within 12 months of hire.

5. Eason was initially assigned to rookie school and completed rookie school in December of 2012.

6. The County arranged for Eason to obtain his EMT-Basic certification following rookie school through a six-month course at the EMS Training Center of Southern Nevada. The course concluded on July 5, 2013.

7. Eason successfully obtained his EMT-Basic certification.

8. Due to the time constraints of rookie school and the EMT-basic course, Eason had not obtained EMT-I certification within 12 months of his hire date.

9. On July 22, 2013 the County met with Eason and with Local 1908 Vice President Mike Afonasiv to execute an Amended Condition of Employment agreement.

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10. Mr. Afonasiv was present at the July 22, 2013 meeting in his capacity as a union official, and signed the Amended Condition of Employment agreement as a witness.

11. The Amended Condition of employment agreement granted Eason an additional four months to obtain the EMT-I certification and required Eason to waive his right to file a grievance if he were discharged for failing to obtain the certification by November 22, 2013.

12. The County arranged for an accelerated EMT-I course for Eason.

13. Eason did not obtain his EMT-I certification by November 22, 2013.

14. On November 22, 2013 Eason met with Deputy Chief Jon Klassen regarding the EMT-I certification matter.

15. The County did not give Eason a further extension to obtain his EMT-I certification at the November 22, 2013 meeting.

16. Eason attempted to resign on November 22, 2013, but the County rejected his resignation letter due to language in the letter with which the County disagreed.

17. At the direction of Chief Klassen, Eason drafted another resignation letter.

18. The County did not follow the bargained-for discharge process.

19. 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 has exclusive jurisdiction over alleged prohibited labor practices under the Act.

2. Maintaining EMT-I certification or higher is a requirement to be a Clark County firefighter.

3. On July 22, 2013 the County could have terminated Mr. Eason's employment.

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4. The County's actions on July 22, 2013 extended an option to Eason to allow him the opportunity to continue as a Clark County firefighter and obtain his EMT-I certification. The Amended Condition of Employment does not purport to change the procedures to be used should the County terminate Eason's employment.

5. The County did not coerce Eason into accepting the Amended Condition of Employment.

6. The County did not violate NRS 288.270(1)(a) when it met with Eason and signed the Amended Condition of Employment.

7. The County did not engage in direct dealing with Eason on July 22,2103 because it did not make any communications that were to the exclusion of Local 1908.

8. The purpose of the County's meeting on July 22, 2013 was to arrange a way for Eason to obtain the necessary certification and was not intended to undercut Local 1908's role as the bargaining agent.

9. The County imposed the terms of resignation upon Eason when it refused his first resignation letter and directed him in preparing the second resignation letter.

10. Eason's resignation was involuntary.

11. The Collective bargaining agreement between the County and Local 1908 states that a post-probationary employee may be discharged only for cause and specifies the process to follow when discharging an employee. That process includes 5-day advance notice and the opportunity to request a hearing.

12. The circumstances surrounding Eason in this case were unique and the County did not effectively change any term of the negotiated collective bargaining agreement affecting the members of the bargaining unit other than Eason.

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13. Because this actions of the County were limited and applied only to Eason Complainant has not met his burden to show that a unilateral change occurred.

14. The complaint in this case is not well-taken.

15. An award of costs pursuant to NRS 288.110(6) is not warranted in this case.

16. 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 Clark County on all claims asserted against it;

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

NICHOLAS EASON, Complainant, vs. CLARK COUNTY, Respondent.	CASE NO. A1-046109 ITEM NO. 798 **NOTICE OF ENTRY OF ORDER**

To: Nicholas Eason and his attorney Adam Levine, Esq.

To: Clark County and their attorney Yolanda T. Givens, 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
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:

Adam Levine, Esq.
Law Office of Daniel Marks
610 South Ninth Street
Las Vegas, NV 89101

Yolanda T. Givens, Esq.
Deputy District Attorney
Clark County
P.O. Box 552215
Las Vegas, NV 89155

YVONNE MARTINEZ, Executive Assistant