

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

LAS VEGAS PEACE OFFICERS ASSOCIATION

Case No. 2015-034

Complainants,

ORDER

v.

CITY OF LAS VEGAS,

ITEM NO. 821

Respondent.

On February 7, 2017, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held an administrative hearing on this matter on November 15, 2016 in Las Vegas, Nevada. The Board accepted post-hearing briefs in this matter as well.

In its Amended Petition for Declaratory Order (Re-filed as a Complaint), Complainant Las Vegas Peace Officers Association ("LVPOA") claims that by refusing to recognize certain concessions that sufficiently funded administrative leave in the amount of 1,800 hours per year, the City of Las Vegas (the "City") has acted in bad faith in violation of its duty to bargain in good faith per NRS 288.270(1). Moreover, LVPOA claims that by the City's actions of continuing to require LVPOA to pay for administrative leave hours at \$65/hour, the City has acted in bad faith also in violation of its duty to bargain in good faith per NRS 288.270(1). LVPOA's Reply Brief in this matter requests the Board to find that "LVPOA prefunded Association Leave Hours at 1800 hours per year for over 30 years when it gave economic concessions to the City of Las Vegas in the 2010/2011 negotiations".

In 2002, LVPOA negotiated its first collective bargaining agreement ("CBA") with an effective end date in 2007 ("2002-2007 Agreement"). This agreement contained an evergreen clause and

1 provided for Association Leave Hours which were defined as a reasonable amount of union leave. The
2 parties thereafter negotiated a subsequent agreement which provided roughly the same in this regard
3 (“2007-2011 Agreement”).

4 The parties thereafter negotiated a memorandum of understanding (“MOU”) in 2009 to adjust
5 certain benefits in the 2007-2011 Agreement due, in part, to the recession. However, the City notified
6 all of its bargaining units, on or about November 20, 2009, that it was still experiencing revenue
7 problems. In or about November 2010, the parties executed another MOU which extended the 2007-
8 2011 Agreement to 2013 as well as containing agreements on several areas that significantly reduced
9 the labor costs for the LVPOA. The parties also changed “a reasonable amount of time” to conduct
10 union business to authorizing 1,800 hours of administrative leave for the period commencing June 29,
11 2011, to June 23, 2012, as a pilot program.

12 The parties subsequently negotiated a July 1, 2013 through June 30, 2015, agreement (2013-
13 2015 Agreement), which also contained an evergreen clause. This Agreement included that same 1,800
14 hour cap language. The parties indicated that they were negotiating a subsequent agreement when SB
15 241 was passed. LVPOA sent a proposal dated June 17, 2015, that indicated that during negotiations
16 for the new CBA (which would be effective from 2015 to 2017), the union made concessions, the value
17 of which offset paid time – this proposal was allegedly not sent during an official bargaining session.
18 The parties thereafter met twice for bargaining sessions after SB 241 passed (on June 24, 2015 and June
19 30, 2015). On or about June 24, 2014, the City rejected LVPOA’s June 17, 2015, proposal and impasse
20 was declared after the second negotiation. The matter was referred to arbitration per NRS 288.

21 The parties conducted a mediation on July 6, 2015, (a proposal was sent which had an Interim
22 Agreement). The City also offered to take the matter to arbitration (though LVPOA notes that at an
23 arbitration, the arbitrator simply could decide between two proposals, and not make a decision on SB
24 241). Thereafter, the parties finalized a CBA which was sent for approval on August 5, 2015. On or
25 about July 15, 2015, the parties agreed on an Interim Agreement. The Interim Agreement stated that the
26 LVPOA agreed to reimburse the City for all hours used to conduct union business, and such
27 reimbursement shall be at the agreed upon hourly rate of \$65/hour. Further, said agreement shall
28 become effective upon ratification of the CBA by the parties and shall continue until an agreement is an

1 executed by all parties or until such time there is a legal adjudication of this matter, including, but not
2 limited to, an arbitration decision or a decision rendered by this Board.

3 On December 23, 2015, LVPOA filed with this Board a Petition for Declaratory Order seeking a
4 finding that the union had previously negotiated 1,800 Association Leave Hours and that it was entitled
5 to reimbursement of any money it paid to the City pursuant to the Interim Agreement. On March 29,
6 2015, the subject Amended Petition for Declaratory Order (Re-Characterized as a Complaint) was filed
7 as factual issues were presented necessitating a hearing, pursuant to NAC 288.410.

8 On November 24, 2014, this Board issued its order in the matter of *Serv. Employees of Int'l*
9 *Union, Local 1107 v. Clark County*, Case No. 2015-011, Item No. 810 (2015). Said order was
10 subsequently appealed to the district court as a petition for judicial review. On June 22, 2016, the
11 Eighth Judicial District issued its decision and reversed Item 810, in part, while upholding other
12 portions of that decision. See generally *Clark County v. Nevada Local Gov't Employee-Mgmt.*
13 *Relations Bd.*, Case No. A-15-728412-J (2016). Thereafter, the Board issued its decision in a new
14 matter, *Police Officers Ass'n of the Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No. 2015-
15 031, Item No. 816 (2016) in which it adopted and found persuasive certain portions the district court
16 order that reversed Item No. 810. These orders are incorporated herein by reference.

17 DISCUSSION

18 As indicated, LVPOA claims the City has acted in bad faith in violation of its duty to bargain in
19 good faith per NRS 288.270(1). That statute states that it is a prohibited practice for a local government
20 employer willfully to refuse to bargain collectively in good faith with the exclusive representative as
21 required in NRS 288.150. NRS 288.270(1)(e). "A party's conduct at the bargaining table must
22 evidence a sincere desire to come to an agreement. The determination of whether there has been such
23 sincerity is made by drawing inferences from conduct of the parties as a whole." *City of Reno v. Int'l*
24 *Ass'n of Firefighters, Local 731*, Item No. 253-A (1991), quoting *NLRB v. Ins. Agent's Int'l Union*, 361
25 U.S. 488 (1970).

26 The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in good faith
27 concerning the mandatory subjects of bargaining listed in NRS 288.150. *Ed. Support Employees Ass'n*
28 *v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015). Paid or nonpaid leaves of

1 absences are mandatory subjects of bargaining. NRS 288.150(2)(e). The duty to bargain in good faith
2 does not require that the parties actually reach an agreement, but does require that the parties approach
3 negotiations with a sincere effort to do so. *Id.* Adamant insistence on a bargaining position or “hard
4 bargaining” is not enough to show bad faith bargaining. *Reno Municipal Employees Ass’n v. City of*
5 *Reno*, Item No. 93 (1980). “In order to show ‘bad faith’, a complainant must present ‘substantial
6 evidence of fraud, deceitful action or dishonest conduct.’” *Boland v. Nevada Serv. Employees Union*,
7 Item No. 802, at 5 (2015), quoting *Amalgamated Ass’n of St., Elec. Ry. and Motor Coach Emp. of*
8 *America v. Lockridge*, 403 U.S. 274, 301 (1971).

9 Jurisdictional Challenge

10 Preliminarily, the Board discusses an apparent jurisdictional challenge advanced by the City. In
11 its Opening Brief, the City states that it “strongly disagrees with the assertion that the POA prefunded
12 1800 hours of leave by virtue of the MOU of 2011. However, the initial question to be answered is
13 whether as currently configured the Board has the authority or jurisdiction to even consider the
14 argument being advanced. The City contends it does not.” Opening, at 4-5. The City noted that
15 “[t]here is no doubt this board was created by the Nevada State Legislature to apply expertise to labor
16 disputes and assist in resolving them before they reach the courts.” *Id.* at 5. The City then argues that
17 “[h]owever, it is equally clear that certain types of disputes, namely the ultimate resolution of disputes
18 concerning issues which were subject to negotiations but were not agreement to, were **required** by the
19 legislature to be decided by an arbitrator, **not** this Honorable Board” *Id.* (**emphasis in original**). The
20 City then concludes that “[a]s a result, the CITY urges this Board to decline the invitation to resolve the
21 conflict between the two competing proposals.” *Id.* at 6. The City seems to attempt to clarify its
22 position by stating that “it certainly did not represent a stipulation to allow this Board to sit in the place
23 of an arbitrator and decide between the two proposals.” *Id.* at 7. As such, it appears that the City
24 does not argue that the Board does not have the authority to hear this entire matter, as it concedes that
25 the Board of course has jurisdiction over unfair labor practices (Opening, at 7, stating “it is clear that the
26 Board does have jurisdiction to hear cases alleging bad faith bargaining under NRS 288.270(1)(e)”).

27 The Board may hear and determine any complaint arising out of the interpretation of, or
28 performance under, the provisions of this chapter by any local government employer, local government

1 employee or employee organization. NRS 288.110. Our Supreme Court “has recognized that the
2 EMRB has exclusive jurisdiction over unfair labor practice issues.” *City of Reno v. Reno Police*
3 *Protective Ass’n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002). “The EMRB has the duty to
4 administer NRS Chapter 288, and thus, is “impliedly clothed with [the] power to construe it as a
5 necessary precedent to administrative action.” *Id.* Further, “[t]he Act grants the EMRB broad authority
6 to ‘hear and determine any complaint arising out of the interpretation of, or performance under, the
7 provisions of this chapter by any ... employee organization.’” *Rosequist v. Int’l Ass’n of Firefighters*
8 *Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002) *overruled on other grounds by Allstate Ins.*
9 *Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007). “We have consistently held that ‘[a]n agency
10 charged with the duty of administering an act is impliedly clothed with power to construe it” *Clark*
11 *Co. Sch. Dist. v. Local Gov’t*, 90 Nev. 442, 446, 530 P.2d 114 (1974).

12 As such, while the City concedes the Board’s clear and established authority to hear the unfair
13 labor practice issue of bad faith bargaining at issue, the City seems to advance the argument above out
14 of an abundance of caution. As this Board has held, “its authority is limited to matters arising out of the
15 interpretation of, or performance under, the provisions of the Employee-Management Relations Act.
16 NRS 288.110(2).” *Bonner v. City of North Las Vegas*, Case No. 2015-027 (2017). To the extent the
17 parties seek the Board to “decide between the two proposals”, that is expressly beyond this Board’s
18 jurisdiction. *Id.*, citing *City of Reno v. Reno Police Protective Ass’n*, 98 Nev. 472, 474–75, 653 P.2d
19 156, 158 (1982); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-
20 90, 178 P.3d 709, 713 (2008); *Int’l Ass’n of Fire Fighters, Local 1908 v. County of Clark*, Case No.
21 A1-046120, Item No. 811 (2015); *Simo v. City of Henderson*, Case No. A1-04611, Item No. 796
22 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010).

23 Bad Faith Bargaining

24 The City argues that the POA did not pre-fund the 1,800 hours by virtue of the MOU executed
25 in 2010. LVPOA argues that “[t]here is no requirement that administrative leave that has already been
26 paid for in negotiations before the effective date of SB 241 must be renegotiated each and every time
27 there is a reference to administrative leave in a” CBA. Opening, at 10. Indeed, LVPOA argues that
28 “[t]his dispute involved the City’s ‘position’ and interpretation of SB 241 that SB 241 requires full

1 funding of the Association leave hours each time a collective bargaining agreement is negotiated...".
2 Reply, at 3; Reply at 8-9. While it appears that this is not actually an argument that the City advanced,
3 the Board notes that it is obvious that regardless of the passage of SB 241, the parties could, of course,
4 have previously voluntarily bargained for leave time in exchange for other concessions in prior
5 contracts. SB 241 simply mandates the parties do so after its passage. This point is quite clear as
6 illustrated in the District Court's analysis as noted by the LVPOA. LVPOA's Reply, at 13. In any
7 event, it appears the City argues simply that the concessions previously made were not given to offset
8 union leave time.

9 SB 241 went into effect upon passage on June 1, 2015. Under SB 241, a collective bargaining
10 agreement expires "at the end of the term stated in the agreement, notwithstanding any provisions of the
11 agreement that it remain in effect, in whole or in part, after the end of that term, until a successor
12 agreement become effective." SB 241, Sec. 1.3(1)(b).

13 SB 241 was codified, in part, in NRS 288.255. NRS 288.255 provides:

14 A local government employer may agree to provide leave to any of its employees
15 for time spent by the employee in performing duties or providing services for an
16 employee organization if the full cost of such leave is paid or reimbursed by the
17 employee organization or is offset by the value of concessions made by the
18 employee organization in the negotiation of an agreement with the local
19 government employer pursuant to this chapter.

18 As indicated, the Board found persuasive, in part, the June 22, 2016 Eighth Judicial District
19 Court Decision and Order in the case of *Clark County v. Nevada Local Government Employee-*
20 *Management Relations Board and Service Employees International Union, Local 17*, case number A-
21 15-728412-J. *Police Officers Ass'n of the Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No.
22 2015-031, Item No. 816 (2016). However, Item No. 816 dealt with a unilateral change as well as step
23 increases while the current matter involves bad faith bargaining and union leave time. The June 22,
24 2016 Eighth Judicial District Court Decision and Order is further instructive in this instant case.

25 In Item No. 810, the 2012 agreement expired on June 30, 2015. However, generally an
26 employer must maintain the status quo period following expiration of a CBA and negotiation of a
27 successor agreement. *Clark County v. Nevada Local Government Employee-Management Relations*
28 *Board and Service Employees International Union, Local 17*, case number A-15-728412-J, at 10-11,

1 citing *Stationary Eng'rs, Local 39 v. Airport Auto. of Washoe Cnty.*, Case No. A1-045349, Item No.
2 133 (1982). This general duty, however, must yield to the City's obligation to comply with the
3 provisions of SB 241 as codified in NRS 288.255. *Id.*

4 The District Court found that "the EMRB fail[ed] to adequately address the difference between
5 the consideration bargained for by the parties in 2012 and the required consideration under the 2015
6 amendment to the law." The District Court explained that "both EMRB and SEIU discuss evidence
7 presented at the EMRB hearing regarding SEIU and Clark County's prior negotiations for concessions
8 fully offsetting the cost of paid leave. Unfortunately, EMRB does not reply on this specific evidence in
9 its decision. EMRB relied on an overly broad presumption." *Id.* at 12. As such, the District Court
10 reversed the "EMRB's decision on this issue and remand[ed] this portion of the case to the EMRB for
11 further fact-finding and a determination of what amount of union leave was bargaining for under the
12 2012 agreement. This amount shall determine to what extent, if any, the County was able to preserve
13 the status quo while also complying with SB 241."

14 The Board heard evidence in this matter as to what concessions were made, if any, in exchange
15 for union leave time. Specifically, the Board heard testimony of Tracey Valenzuela and Scott Edwards.
16 Importantly, Valenzuela, who was involved in negotiations, testified that she did not have any
17 recollection of any discussion relative to the amount of money specifically being targeted to change the
18 terms from a reasonable amount of union hours to 1,800. Edwards provided similar testimony stating
19 that there were no discussions at any time during the negotiations as to what specific amount was
20 payable for that specific adjustment. While Edwards testified that he believes it was generally discussed
21 and it was all part of the process, no testimony was presented showing what specific and actual
22 concessions were made in exchange for union leave time as required by NRS 288.255. Indeed,
23 Edwards simply testified when asked if he believed the concessions funded, at least in part, the leave
24 hours, that "I do. I think that was all part of the process, the time off that we were going to spend would
25 be included in the concessions." Moreover, Valenzuela testified that there "was not a limit on the
26 number of hours that would be approved" under the "reasonable amount of time" words that previously
27 existed in the parties prior CBA. Valenzuela clarified that under the MOU with the 1,800 hours cap
28 "[t]here was a limit" that could have been approved but under the old language there was no limit to the

1 number of hours that could have been approved. The Board does not find Edwards' testimony credible
2 that they generally exchanged certain concessions for leave time when he also testified that he could not
3 recall any specific or actual concessions. Indeed, the Board does not find compelling that LVPOA
4 would make significant concessions in exchange for a cap when none previously existed. Complainant
5 failed to present any evidence of actual and specific concessions made in exchange for union leave time.

6 NRS 288.255 is plain, unambiguous, and unmistakable in its requirement that an employer may
7 agree to provide leave for time spent for an employee organization if "the full cost of such leave is ...
8 offset by the value of concessions made by the employee organization". The Board finds that the
9 Complainant failed to present sufficient evidence that any concessions it made was in exchange for
10 union leave time. The Board notes that the above analysis is relevant and necessary in determining the
11 issue presented: whether the City failed to bargain in good faith.¹

12 As indicated, adamant insistence on a bargaining position or "hard bargaining" is not enough to
13 show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980). "In
14 order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or
15 dishonest conduct.'" *Boland v*, Item No. 802, at 5, quoting *Amalgamated Ass'n of St., Elec. Ry. and*
16 *Motor Coach Emp. of America*, 403 U.S. at 301. Based on the conduct of the parties as a whole,
17 LVPOA's argument that by refusing to recognize concessions sufficiently funded the 1,800 paid leave
18 hours the City acted in bad faith, is not well taken. In the same vein, the City's actions of continuing to
19 require LVPOA to pay for leave hours does not amount to failure to bargain in good faith. The parties
20 met multiple times, proceeded to mediation, and the parties finalized a CBA. The City also at least
21 made an offer to proceed to arbitration (even though LVPOA contends that could not have resolved the
22 issue due to the role of an arbitrator). Simply because the City took the hard position that the LVPOA
23 did not make previous concessions in exchange for union leave time, does not equate to a failure to
24 bargain in good faith based on the conduct of the parties as a whole and the evidence presented. Indeed,
25 Complainant failed to present sufficient evidence of fraud, deceitful action or other dishonest conduct
26 by the City.

27 ¹ However, the Board also notes that decisions in Item Nos. 810 (including the appeal related thereto)
28 and 816 are distinguishable as those matters dealt with unilateral changes and not bad faith bargaining
per se.

1 Finally, based on the facts in this case and the issues presented, the Board declines to award cost
2 and fees in this matter.

3 **FINDINGS OF FACT**

4 1. In 2002, LVPOA negotiated its first CBA with an effective end date in 2007.

5 2. This agreement provided for Association Leave Hours which was defined as a
6 reasonable amount of union leave.

7 3. The parties negotiated a subsequent agreement which provided roughly the same in this
8 regard.

9 4. The parties negotiated an MOU in 2009 to adjust certain benefits in the 2007-2011
10 Agreement due, in part, to the recession.

11 5. The City notified all of its bargaining units, on or about November 20, 2009, that it was
12 still experiencing revenue problems.

13 6. In or about November 2010, the parties executed another MOU which extended the
14 2007-2011 Agreement to 2013 as well as containing agreements on several areas that significantly
15 reduced the labor costs for the LVPOA.

16 7. The parties also changed "a reasonable amount of time" to conduct union business to the
17 authorizing 1,800 hours of administrative leave for the period commencing June 29, 2011, to June 23,
18 2012, as a pilot program.

19 8. The parties negotiated a July 1, 2013, through June 30, 2015, agreement which included
20 that same 1,800 hour cap language.

21 9. LVPOA sent a proposal dated June 17, 2015, which indicated that during negotiations
22 for the new CBA, the union made concessions, the value of which offset paid time.

23 10. The parties met twice for bargaining sessions on June 24, 2015, and June 30, 2015.

24 11. On or about June 24, 2014, the City rejected LVPOA's June 17, 2015, proposal and
25 impasse was declared after the second negotiation.

26 12. The parties conducted a mediation on July 6, 2015, (a proposal was sent which had an
27 Interim Agreement).

28 13. The City offered to take the matter to arbitration.

1 14. The parties finalized a CBA.

2 15. On or about July 15, 2015, the parties agreed on an Interim Agreement.

3 16. The Interim Agreement stated that the LVPOA agreed to reimburse the City for all hours
4 used to conduct union business, and such reimbursement shall be at the agreed upon hourly rate of
5 \$65/hour.

6 17. Further, said agreement shall become effective upon ratification of the CBA by the
7 parties and shall continue until an agreement is executed by all parties or until such time there is a legal
8 adjudication of this matter, including, but not limited to, an arbitration decision or a decision rendered
9 by this Board.

10 18. On November 24, 2014, this Board issued its order in the matter of *Serv. Employees of*
11 *Int'l Union, Local 1107 v. Clark County*, Case No. 2015-011, Item No. 810 (2015).

12 19. On June 22, 2016, the Eighth Judicial District issued its decision and reversed Item 810,
13 in part, while upholding other portions of that decision – *Clark County v. Nevada Local Gov't*
14 *Employee-Mgmt. Relations Bd.*, Case No. A-15-728412-J (2016).

15 20. Thereafter, the Board issued its decision in a new matter, *Police Officers Ass'n of the*
16 *Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No. 2015-031, Item No. 816 (2016) in which
17 it adopted and found persuasive certain portions the district court order that reversed Item No. 810.

18 21. Valenzuela testified that there “was not a limit on the number of hours that would be
19 approved” under the “reasonable amount of time” words that previously existed in the parties prior
20 CBA.

21 22. Valenzuela, who was involved in negotiations, testified that she did not have any
22 recollection of any discussion relative to the amount of money specifically being targeted to change the
23 terms from a reasonable amount of union hours to 1,800.

24 23. Edwards provided similar testimony stating that there were no discussions at any time
25 during the negotiations as to what specific amount was payable for that specific adjustment.

26 24. While Edwards testified that he believes it was generally discussed and it was all part of
27 the process, no testimony was presented showing was specific and actual concessions were made in
28 exchange for union leave time.

1 25. Valenzuela testified that under the MOU with the 1,800 hours cap "[t]here was a limit"
2 that could have been approved but under the old language there was no limit to the number of hours that
3 could have been approved.

4 26. Complainant failed to present any evidence of actual and specific concessions made in
5 exchange for union leave time.

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

8 CONCLUSIONS OF LAW

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

11 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
12 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

13 3. NRS 288.270(1)(e) states that it is a prohibited practice for a local government employer
14 willfully to refuse to bargain collectively in good faith with the exclusive representative as required in
15 NRS 288.150.

16 4. "A party's conduct at the bargaining table must evidence a sincere desire to come to an
17 agreement. The determination of whether there has been such sincerity is made by drawing inferences
18 from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No.
19 253-A (1991), quoting *NLRB v. Ins. Agent's Int'l Union*, 361 U.S. 488 (1970).

20 5. The Act imposed a reciprocal duty on employers and bargaining agents to negotiate in
21 good faith concerning the mandatory subjects of bargaining listed in NRS 288.150.

22 6. The duty to bargain in good faith does not require that the parties actually reach an
23 agreement, but does require that the parties approach negotiations with a sincere effort to do so.

24 7. Adamant insistence on a bargaining position or "hard bargaining" is not enough to show
25 bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980).

26 8. In order to show 'bad faith', a complainant must present 'substantial evidence of fraud,
27 deceitful action or dishonest conduct.'" *Boland v.*, Item No. 802, at 5, quoting *Amalgamated Ass'n of*
28 *St., Elec. Ry. and Motor Coach Emp. of America*, 403 U.S. at 301.

