

**FILED**

**APR 26 2023**

**STATE OF NEVADA  
E.M.R.B.**

**STATE OF NEVADA**

**GOVERNMENT EMPLOYEE-MANAGEMENT**

**RELATIONS BOARD**

LAS VEGAS CITY EMPLOYEES'  
ASSOCIATION and JULIE TERRY,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CASE NO. 2021-008**

**ORDER ON RESPONDENT'S MOTION  
TO DISMISS FOR FAILURE  
TO EXHAUST CONTRACTUAL  
REMEDIES and MOTION TO DEFER  
TO ARBITRATION PROCEEDINGS**

**ITEM NO. 884**

LAS VEGAS CITY EMPLOYEES'  
ASSOCIATION and JODY GLEED,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CONSOLIDATED WITH  
CASE NO. 2021-012**

LAS VEGAS CITY EMPLOYEES'  
ASSOCIATION and MARK BROOKS,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CONSOLIDATED WITH  
CASE NO. 2021-013**

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 1285,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CONSOLIDATED WITH  
CASE NO. 2021-015**

1                                   **ORDER ON RESPONDENT’S MOTION TO DISMISS FOR FAILURE**  
2                                   **TO EXHAUST CONTRACTUAL REMEDIES and**  
3                                   **MOTION TO DEFER TO ARBITRATION PROCEEDINGS**

4                                   **EN BANC**

5                   On March 21, 2023, this matter came before the State of Nevada, Government Employee-  
6 Management Relations Board (the “Board”) for consideration and decision on Respondent’s Motion to  
7 Dismiss Complainant’s Complaint pursuant to the provisions of the Employee-Management Relations  
8 Act (The Act), NRS Chapter 233B, and NAC Chapter 288. Deliberations on the motion took place at  
9 the April 11, 2023, meeting. At issue is whether or not Case Nos. 2021-012, 2021-013 and 2021-015  
10 may be dismissed for failure to exhaust contractual remedies and whether deferral to arbitration  
11 proceedings is appropriate in Case No. 2022-008.

12                   **A.     Motion to Dismiss for Failure to Exhaust Contractual Remedies.**

13                   NAC 288.375 provides a list of instances when the Board may dismiss a complaint.  
14 Specifically, NAC 288.375 states in relevant part:

15                   The Board may dismiss a matter for any of the following reasons:

16                   \* \* \*

17                                   (2) [u]nless there is a clear showing of special circumstances or extreme  
18                                   prejudice, if the parties have not exhausted their contractual remedies,  
19                                   including rights to arbitration.

20                   \* \* \*

21                   Thus, absent a clear showing of “special circumstances” or “extreme prejudice,” a matter may  
22 be dismissed by the Board for failure of a party to pursue contractual remedies, including a right to  
23 arbitration. The Board has repeatedly stated that the preferred method for resolving disputes is through  
24 the bargained for processes, and the Board applies NAC 288.375(2) liberally to effectuate that purpose.  
25 *See Operating Engineers Local Union No. 3 v. Incline Village General Improvement District*, Case No.  
26 Item No. 864-C (2020); *Las Vegas Peace Officers Supervisors Association v. City of Las Vegas*, Case  
27 No. 2019-013, Item No. 848 (2019); *Las Vegas Metropolitan Police Dep 't v. Las Vegas Police*  
28 *Protective Ass 'n, Inc.*, Case No. 2018-017 (2018); *Jessie Gray Jr. v. Clark County School Dist.*, Case  
No. AI-046015, Item No. 758 (2011); *Las Vegas City Employees' Ass 'n v. City of Las Vegas*, Case No.

1 AI-045940, Item No. 691 (2008); *Saavedra v. City of Las Vegas*, Case No. AI-045911, Item No. 664  
2 (2007); *Carpenter vs. Vassiliadis*, Case No. AI-045773, Item No. 562E (2005); *Las Vegas Police*  
3 *Protective Ass'n Metro, Inc. v. Las Vegas Metropolitan Police Department*, Case No. AI-045783, Item  
4 No. 578 (2004); *Nevada Serv. Employees Union v. Clark County.*, Case No. AI-045759, Item No. 540  
5 (2003); and *Ed. Support Employees Ass 'n v. Clark Cty. School Dist.*, Case No. AI-045509, Item No.  
6 288 (1992).

7 In this case the City of Las Vegas (“City”) is arguing that the cases involving Gleed, Brooks and  
8 IAFF #1285 should be dismissed because Complainant has failed to submit the cases to bargained for  
9 arbitration prior to filing its Complaint with the Board. The City further argued that Complainant  
10 failed to make any showing of special circumstances or extreme prejudice that would justify its failure  
11 to exhaust the administrative remedies.

12 The Complainants argue that the reason they did not pursue arbitration for Case Nos. 2021-012,  
13 2021-013 and 2021-015 is because the costs of arbitration were too high and that the labor practices  
14 raised in the Complaint could not be resolved via the bargained for process. The Complainant also  
15 argued that the claims they raised are not contractually based.

16 First, the Board finds that the claims are contractually based since the mechanisms used by the  
17 Respondent to terminate Terry were in fact located in the Collective Bargaining Agreement (“CBA”).  
18 The parties agreed to the terms of the CBA and the provision at issue had been in place for years.

19 Second, the Board also finds that there are no special circumstances or extreme prejudice  
20 present that would justify Complainant not following the bargained for processes in these cases. There  
21 has been no evidence presented to the Board indicating that Complainant could not have submitted  
22 these cases to arbitration aside from concerns over cost. Complainant argued that the cases are so  
23 similarly related to the Terry matter that there was no need to submit the Gleed, Brooks and IAFF  
24 #1285 to arbitration while at the same time arguing that Complainant could not have followed the same  
25 bargained for processes that were utilized in the Terry matter that resulted in an arbitration decision.  
26 These positions are inconsistent with each other.

27 The alleged facts in Gleed, Brooks and IAFF #1285 are sufficiently different from Terry that it  
28 is possible that the decision reached in the Terry arbitration may not have been the same if these cases

1 had been submitted to arbitration. It is apparent to the Board that the bargained for process was capable  
2 of addressing the underlying issue because Terry did file a grievance and the matter was submitted to  
3 arbitration and the other parties did file grievances.

4 Finally, the Board finds that the cost of arbitration does not constitute a “special circumstance”  
5 or result in “extreme prejudice” to any party. The foregoing is especially true when one considers the  
6 fact that having these matters proceed through the grievance process to arbitration is exactly what the  
7 Complainant bargained for and agreed to utilize for each case.

8 **B. Motion to Defer to Arbitration Proceedings.**

9 The Nevada Supreme Court adopted the NLRB’s five-part test relative to deferral to an  
10 arbitration in *City of Reno v. Reno Police Dept.* 118, Nev 889, 896 (2003). The five-part test states that  
11 the Board **shall defer** to an arbitration if:

- 12 1. The arbitration proceedings were fair and regular;
- 13 2. The parties agreed to be bound;
- 14 3. The decision was “not clearly repugnant to the purposes and policies of the  
Employee-Management Relations Act;
- 15 4. The contractual issue was factually parallel to the unfair labor practice issue; and
- 16 5. The arbitrator was presented generally with the facts relevant to resolving the  
unfair labor practice.

17 *Id.*, see also *Robert Ortiz v. Service Employees International Union Local, 1107*, Case No. 2020-021,  
18 Item 879 (2022). The party asking this Board to reject an arbitration award has the burden of  
19 demonstrating that the five-part test above was not met. *Id.* The Board will examine each part of the  
20 five-part test below.

21 1. Were the Arbitration Proceedings Fair and Regular?

22 Both parties had an opportunity to present their arguments to the Arbiter through their  
23 respective legal representatives which included the presentation of witnesses, oral argument and the  
24 filing of written briefs. Thus, the Board finds that a regular review of the evidence was conducted.  
25 Moreover, there was no evidence that suggests that the proceedings were improper or arbitrary in any  
26 way.

27 2. Did the Parties Agree to be Bound?

28 There is no dispute by Complainant or Respondent that the parties agreed to be bound by the

1 grievance and arbitration processes set out in the CBA.

2 3. Was the Decision of the Arbiter repugnant to the Purposes and Policies of the Employee-  
3 Management Relations Act?

4 The National Labor Relations Board has explained that a decision is not “clearly repugnant”  
5 unless the decision is “palpably wrong.” *Verizon New England Inc. v. NLRB*, 423 U.S. App. D.C. 316,  
6 322 (2016); *see also Utility Workers Union off America, Local 246, AFL-CIO v. N.L.R.B*, U.S. App.  
7 D.C. 39 F.3d 1210, 1214 (1994). Moreover, arbitration is preferred for the simple reason that it is  
8 understood to be “a part of the continuous collective bargaining process” that lies at the heart of the  
9 NLRB. *Id.* (citing to *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80  
10 S.Ct. 1347, 1352, 4 L.Ed.2d 1409 (1960)).

11 In this particular case, the Arbiter’s findings and conclusions were consistent with Nevada law  
12 and were issued pursuant to bargained for procedures which include, but are not limited to, Sections  
13 17.6.1, 17.6.4 and 17.6.8 of the CBA. There is nothing in the cited provisions, or any other provision  
14 of the CBA that was referenced by the Arbiter, that are contrary to the Employee-Management  
15 Relations Act nor was the accompanying analysis. The Board also agrees with the Arbiter that Section  
16 17.6.8 of the CBA was properly applied by Respondent.

17 In sum, the Board finds that the provisions used by the Respondent to place Terry on unpaid  
18 leave and separate her from employment are contained within the CBA and were therefore bargained  
19 for. The Board further finds that the decision of the Arbiter was not “repugnant” to the Nevada  
20 Employee-Management Relations Act nor was the decision of the Arbiter “palpably wrong.”

21 4. Are the Contractual and Prohibited Practice Issues were Factually Parallel?

22 Based upon an examination of the briefs filed by the parties in the arbitration proceedings, as  
23 well as a transcript of the arbitration proceedings, along with the exhibits and arguments submitted to  
24 this Board by the parties in this matter, the Board finds that the contractual and prohibited practice  
25 issues are factually parallel.

26 5. Was the Arbiter Presented Generally with the Facts Relevant to Resolving the Alleged  
27 Unfair Labor Practice?

28 Based upon an examination of the briefs filed by the parties before the Arbiter, as well as a

1 transcript of the arbitration proceedings, the Board finds that the facts relevant to resolving the alleged  
2 unfair labor practice were presented to the Arbiter and the decision of the Arbiter clearly reflects this  
3 finding.

4 Based on the foregoing, **IT IS HEREBY ORDERED** Respondent's Motion to Dismiss Case  
5 Nos. 2021-012, 2021-013 and 2021-015 is hereby **GRANTED** and that these cases are **DISMISSED**  
6 **WITH PREJUDICE**.

7 It is **FURTHER ORDERED** that Respondent's Motion to Defer to Arbitration Proceedings is  
8 hereby **GRANTED**.

9 DATED this 26 day of April 2023.


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GOVERNMENT EMPLOYEE-  
MANAGEMENT RELATIONS BOARD

By:   
BRENT ECKERSLEY, ESQ., Chair

By:   
SANDRA MASTERS, Vice-Chair

By:   
MICHAEL J. SMITH, Board Member

By:   
TAMMARA M. WILLIAMS, Board  
Member

By:   
MICHAEL A. URBAN, Board Member

**FILED**

**APR 26 2023**

STATE OF NEVADA  
E.M.R.B.

**STATE OF NEVADA**

**GOVERNMENT EMPLOYEE-MANAGEMENT**

**RELATIONS BOARD**

LAS VEGAS CITY EMPLOYEES'  
ASSOCIATION and JULIE TERRY,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CASE NO. 2021-008**

**NOTICE OF ENTRY OF ORDER**

**ITEM NO. 884**

LAS VEGAS CITY EMPLOYEES'  
ASSOCIATION and JODY GLEED,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CONSOLIDATED WITH  
CASE NO. 2021-012**

LAS VEGAS CITY EMPLOYEES'  
ASSOCIATION and MARK BROOKS,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CONSOLIDATED WITH  
CASE NO. 2021-013**

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 1285,

Complainants,

v.

THE CITY OF LAS VEGAS,

Respondent.

**CONSOLIDATED WITH  
CASE NO. 2021-015**

1 TO: Each named Complainant and their attorney of record, Jeffrey Allen, Esq.  
2 TO: Each named Respondent and their attorneys of record, Morgan Davis, Esq., Chief Deputy City  
3 Attorney and the City of Las Vegas City Attorney's Office.  
4

5 PLEASE TAKE NOTICE that the attached **ORDER ON RESPONDENT'S MOTION TO**  
6 **DISMISS FOR FAILURE TO EXHAUST CONTRACTUAL REMEDIES and MOTION TO**  
7 **DEFER TO ARBITRATION PROCEEDINGS** was entered in the above-entitled matter on April 26,  
8 2023.

9 A copy of said order is attached hereto.

10 DATED this 26 day of April 2023.

11 GOVERNMENT EMPLOYEE-  
12 MANAGEMENT RELATIONS BOARD

13 BY   
14 \_\_\_\_\_  
15 MARISU ROMUALDEZ ABELLAR  
16 Executive Assistant  
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Government Employee-Management Relations  
3 Board, and that on the 26 day of April 2023, I served a copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER** by mailing a copy thereof, postage prepaid to:

5  
6 Jeffrey F. Allen, Esq.  
7 857 N. Eastern Avenue  
8 Las Vegas, NV 89101

9 Morgan Davis, Esq.  
10 Chief Deputy City Attorney  
11 City of Las Vegas  
12 495 South Main Street, Sixth Floor  
13 Las Vegas, NV 89101

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MARISU ROMUALDEZ ABELLAR  
Executive Assistant