

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
4

5 PERSHING COUNTY LAW
6 ENFORCEMENT ASSOCIATION & OPERATING ENGINEERS LOCAL UNION, NO. 3,
7 Complainant,
8 vs.
9 PERSHING COUNTY,
10 Respondent.

ITEM NO. 725A
CASE NO. A1-045974
ORDER

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12 For Complainant: Michael E. Langton, Esq.
Pershing County Law Enforcement Association & Operating
13 Engineers Local No. 3.
14 For Respondents: Jim C. Shirley, Esq.
Pershing County

15 This matter came on before the State of Nevada, Local Government Employee-
16 Management Relations Board ("Board"), on November 1, 2010 and November 2, 2010 for
17 hearing and decision pursuant to the provisions of the Local Government Employee-
18 Management Relations Act ("the Act"); NAC Chapter 288, NRS chapter 233B, and was properly
19 noticed pursuant to Nevada's open meeting laws.

20 On March 17, 2010, the Pershing County Law Enforcement Association & Operating
21 Engineers Local Union No. 3 ("the Association") filed a prohibited practices complaint with this
22 Board. The complaint asserts that Respondent Pershing County unilaterally changed a term and
23 condition of employment when it implemented a change to the County's vehicle policy which
24 affected certain deputies of the Pershing County Sheriffs Office. In effect, the change to the
25 vehicle policy meant that some deputies who previously had been given a take-home vehicle
26 would no longer be able to use County vehicles as take-home vehicles. The complaint also
27 asserts that the County failed to negotiate in good faith when it refused to process a grievance to

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1 the level of an external hearing officer pursuant to the grievance procedure outlined in the
2 collective bargaining agreement between the parties.

3 According to the evidence presented to the Board at the hearing, the Pershing County
4 Board of County Commissioners adopted a policy governing the use of County vehicles at a
5 Commission meeting held on February 18, 2009. The policy affected all County employees.
6 Although the County Commissioners asked County employees to acknowledge receipt of a copy
7 of the new policy (Ex. 3), the County Sheriff did not present his employees with a copy of the
8 new policy, and declined to enforce the policy at that time. (Ex. 5). The stated reason for the
9 Sheriff's refusal to enforce the policy was due to a pending grievance which had been filed by
10 the Association over the new policy ("the first grievance").

11 Although the County Commissioners eventually denied the Association's first grievance,
12 based upon issues of timeliness, the County nonetheless met with the Association to discuss the
13 Association's concerns about the new policy. These meetings resulted in a Second Amended
14 Vehicle Policy. (Ex. 18). The Second Amended Policy addressed some of the concerns that had
15 been raised by the Association, such as building and securing a parking lot for the deputies'
16 personal vehicles, allowing for the transport of family members in County vehicles in emergency
17 situations, as well as clarifying and defining the term "accident" as used in the policy.

18 The County Commissioners approved the resulting changes to the vehicle policy at a
19 Commission meeting in May of 2009 (Ex. 14), and the Second Amended Vehicle Policy was
20 drafted shortly thereafter in June of 2009. (Ex. 18). However, the Sheriff continued to refuse to
21 enforce the Second Amended Vehicle Policy. At least as of August 19, 2009, the County
22 Commissioners were still demanding that the Sheriff implement the approved Second Amended
23 vehicle policy. (Ex. 30).

24 The Sheriff eventually did so by providing his employees with a copy of the vehicle
25 policy on September 18, 2009.

26 After the Sheriff began to enforce the policy on September 18, 2009, the President of the
27 Association, Deputy Nathan Carmichael, initiated a grievance. This grievance was separate from
28 the earlier grievance that had led to the changes in the Second Amended Policy. This second

1 grievance was initiated informally when Deputy Carmichael spoke with Ron Skinner, the
2 Pershing County Sheriff about the policy, as outlined in the collective bargaining agreement as
3 the first step in the grievance process. The Sheriff's Office agreed that the grievance had merit,
4 but acknowledged that the grievance could not be resolved within the Sheriff's Office because
5 the Second Amended Vehicle Policy came from the County Commissioners. After the
6 Association had exhausted the grievance process within the Sheriff's Office, it then presented the
7 grievance to the Board of County Commissioners. The Board of County Commissioners, through
8 its designee, Gene Bell, eventually denied the grievance because the grievance did not fall within
9 the definition of a grievance as outlined in the collective bargaining agreement, and because the
10 grievance was not timely filed. (Ex. 36). The Association was notified of this denial on
11 November 10, 2009. (Ex. 36). On November 24, 2009, the Association notified the Board of
12 County Commissioners that it was appealing the denial of the grievance to an external hearing
13 officer as outlined in Article 18 of the collective bargaining agreement. (Ex. 33; 34). The County
14 refused to present the matter to an external hearing officer. (Ex. 27).

15 Based upon these circumstances, the Association filed its complaint with the Board, and
16 asserts that the County committed a prohibited labor practice when it unilaterally implemented
17 the Second Amended Vehicle Policy without first bargaining in good faith regarding the change;
18 and that the County committed a prohibited labor practice when it refused to submit the matter to
19 an external hearing officer under the procedure for resolving grievances.

20 The County denies these charges, and asserts as an affirmative defense that the Complaint
21 is barred by the six-month statute of limitations contained in NRS 288.110(4).

22 Timeliness of Complaint

23 As a preliminary matter, we address the County's statute of limitations defense. The
24 County asserts that the six-month limitations period commenced when the County first enacted a
25 vehicle policy at a public meeting in February of 2009. Alternatively, the County argues that the
26 limitations period commenced when the County Commissioners approved the Second Amended
27 vehicle policy which was drafted in June of 2009. Either of these dates would render the
28 Association's March 17, 2010 complaint untimely.

1 The statute of limitations issue presented in this case is akin to the statute of limitations
2 issue in the case of Cone v. Nevada Service Employees Union Local 1107, 116 Nev. 473, 998
3 P.2d 1178 (2000). In Cone, the Nevada Supreme Court considered a claim which had been filed
4 six years after a disputed policy had been authorized, but less than six months after it had
5 actually begun to be enforced. Id. at 475-476, 998 P.2d at 1180. The Nevada Supreme Court
6 concluded that the six-month statute of limitations in NRS 288.110(4) commenced when the
7 policy actually went into effect and began to be enforced against the employees, and not when it
8 was first authorized. Id. at 477, 998 P.2d at 1181, n. 2.

9 Accordingly, the Board looks to the evidence in this case to determine when the vehicle
10 policy first began to be enforced against the deputies of the Pershing County Sheriff's Office.
11 The Board looked to Exhibit 30, which indicates that at least as of August 19, 2009, the policy
12 was not yet being enforced by the Sheriff's Office, notwithstanding the fact that it had been
13 approved by the County Commissioners.

14 At the hearing, Deputy Carmichael testified that the vehicle policy was first disseminated,
15 and therefore began to be enforced against the Sheriff's deputies on September 18, 2009. The
16 Board finds Deputy Carmichael to be credible on this point. This date, as the effective date, was
17 also confirmed by Exhibit 23. No other date was suggested by the parties as the date that the
18 policy first began to be enforced against the deputies. Thus, the Board concludes that there is
19 substantial evidence to indicate that the effective date of the vehicle policy is September 18,
20 2009, and pursuant to Cone, the six-month statute of limitations began to run at that time. The
21 Complaint was filed on March 17, 2010, which is within six months of September 18, 2009. The
22 complaint is therefore timely under NRS 288.110(4).

23 Unilateral Change

24 "An unfair labor practice includes the prohibited practice of unilaterally changing a
25 subject of mandatory bargaining." City of Reno v. Reno Police Protective Ass'n 118 Nev. 889,
26 895, 59 P.3d 1212, 1217 (2002). However, if the change is not unilateral, or the change does not
27 affect one of the mandatory subjects of bargaining, the change will not constitute a prohibited
28 labor practice. e.g. Voilas v. General Motors Corp., 170 F.3d 367, 379 (3d Cir. 1999). This

1 Board is empowered to determine whether a particular matter is a mandatory subject of
2 bargaining under the Act. City of Reno at 895, 59 P.3d at 1217 (citing Clark Co. Sch. Dist. v.
3 Local Gov't Emp. Mgm't Rel. Bd., 90 Nev. 442, 446, 530 P.2d 114, 117 (1974)).

4 The mandatory subjects of bargaining are limited and are set forth in NRS 288.150(2).
5 An employer's vehicle policy is not specifically listed in NRS 288.150(2). However, a particular
6 matter may fall within the scope of an enumerated subject of bargaining if it is "significantly
7 related" to one or more of the enumerated subjects listed in NRS 288.150(2). Truckee Meadows
8 Fire Protection Dist. v. International Ass'n of Fire Fighters, Local 2487, 109 Nev. 367, 849 P.2d
9 343 (1993).

10 The Association asserts that the vehicle policy is related to "employee safety," which is
11 one of the enumerated mandatory subjects of bargaining. NRS 288.150(2)(r). The Board
12 considered the arguments that the vehicle policy in this case is related to the safety of the
13 employees, but notes that these arguments only revolved around response time, and the Board
14 does not find the evidence compelling to establish that the vehicle policy rises to the level of
15 being "significantly related" to an enumerated mandatory subject of bargaining.

16 As the vehicle policy at issue in this case was not a mandatory subject of bargaining, the
17 County did not commit a unilateral change when it changed the policy.

18 Refusal to Negotiate In Good Faith

19 As a local government employer, Pershing County owes a duty to the Association to
20 negotiate in good faith with the Association. NRS 288.270(1)(e). The Association contends that
21 the County breached this duty when it failed to process the Association's grievance to the final
22 step in the process, by presenting an appeal to an external hearing officer. This Board has
23 previously held that when a local government employer strictly adheres to the contractual
24 requirements of the bargained-for grievance process, the employer does not commit a prohibited
25 labor practice. Nevada Classified School Dist. Employees Assoc. v. Clark County School Dist.,
26 Item No. 105, EMRB Case No. A1-045336 (1980) (employer's insistence on strict compliance
27 with the negotiated time frames for filing a grievance was not a prohibited labor practice); see
28 also GAF Corp., 265 NLRB 176 (1982).

1 There was no dispute between the parties that the County refused to proceed with the
2 requested appeal to the external hearing officer. At the hearing before this Board, the County
3 asserted two reasons for doing so: 1) that the grievance filed by the Association did not fall
4 within the definition of the term "grievance" under the collective bargaining agreement, and
5 therefore the bargained-for grievance procedure did not apply to this dispute; and 2) that even if
6 the bargained-for grievance procedure did apply, then the Association waived its right to proceed
7 to the hearing officer because the Association did not meet the timelines to file the appeal as
8 contained within the collective bargaining agreement.

9 The County and the Association have bargained for, and agreed upon, a procedure for
10 resolving disputes relating to the interpretation and application of the collective bargaining
11 agreement. This agreed-upon procedure does not extend to every conceivable dispute between
12 the County and the Association. It covers only claimed violations, misapplications, or
13 misinterpretations of "a specific provision of [the collective bargaining] Agreement which
14 adversely affects an employee or employees of the unit who are filing the grievance. The
15 exercise or lack of exercise of County Rights is specifically excluded from the Grievance
16 Procedure." (Ex. 1, Art. 16(A)(1)).

17 In order for this specific procedure to be applicable, the Association must present a claim
18 that the County has violated, misapplied or misinterpreted a specific provision of the agreement.
19 The Association has not done so. The Board examined the agreement, and concludes that there is
20 no clause or provision in the agreement which addresses the use of County vehicles, and thus no
21 "specific provision" of the Agreement which the Association can point to in order to trigger the
22 grievance procedure.

23 The Association has asserted that the change in the vehicle policy violates Article 2 and
24 Article 3 of the agreement. The Board does not agree. Article 2 addresses the designated
25 authorized agents for the County and the Association respectively, and Article 3 is the
26 recognition clause which recognizes the Association as the bargaining agent.

27 To the extent that the Association is asserting that the County failed to recognize the
28 Association when it changed the vehicle policy without bargaining, we note that this claim

1 presupposes that the County had an obligation to bargain with the Association over the change in
2 the vehicle policy. As we have noted above, the County did not have such an obligation because
3 the vehicle policy falls outside the scope of mandatory bargaining.

4 The Association also asserts that the use of a take-home vehicle by deputies has become a
5 term and condition of employment as established by past-practice. The Board makes no finding
6 on this argument, as this question presents merely a contractual dispute, and does not present a
7 claim arising out of the interpretation of, or performance under, the provisions of the Act. NRS
8 288.110(2). This claim therefore falls outside of the Board's jurisdiction.

9 Based upon the forgoing, the Board makes the following findings of fact and conclusions of law.

10 **FINDINGS OF FACT**

11 1. The original vehicle policy was never enforced as to the deputies in the Pershing County
12 Sheriff's Office.

13 2. The Second Amended vehicle policy was not enforced as to the deputies in the Pershing
14 County Sheriff's Office until September 18, 2009.

15 3. The Association filed its Complaint with this Board on March 17, 2010.

16 4. The Complainant did not present substantial evidence to establish that the vehicle policy
17 in this case is significantly related to employee safety.

18 5. The final step in the bargained-for grievance process is to appeal a decision of the
19 Pershing County Board of Commissioners to an external hearing officer.

20 6. Pershing County refused to take the Association's grievance to an external hearing
21 officer.

22 7. The parties' collective bargaining agreement does not contain any specific provision
23 which addresses or refers to a take-home vehicle policy.

24 8. Prior to February of 2009, there was no written policy governing the use of take home
25 vehicles.

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

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CONCLUSIONS OF LAW

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

4 2. The Board has jurisdiction over the parties and the subject matters of the Complaint on
5 file herein pursuant to the provisions of NRS Chapter 288 as discussed within this Order.

6 3. NRS 288.110(4) contains a six-month statute of limitations for claims filed with the
7 Board.

8 4. Pursuant to the Nevada Supreme Court's decision in *Cone v. Nevada Service Employees*
9 *Union Local 1107*, 116 Nev. 473, 998 P.2d 1178 (2000), the six-month limitation period did not
10 begin to run until the Second Amended vehicle policy began to be enforced against the Sheriff's
11 deputies.

12 5. The complaint was filed within six-months of the date that the Second Amended Vehicle
13 Policy was actually enforced against the Sheriff's deputies, and the complaint is therefore timely
14 under NRS 288.110(4).

15 6. A local government employer's duty to bargain in good faith with a recognized
16 bargaining agent extends to the subjects of mandatory bargaining enumerated in NRS
17 288.150(2), including subjects that are significantly related to the enumerated subjects pursuant
18 to *Truckee Meadows Fire Protection Dist. v. International Ass'n of Fire Fighters, Local 2487*
19 *109 Nev. 367, 849 P.2d 343 (1993)*.

20 7. Employee safety is a mandatory subject of bargaining.

21 8. A unilateral change to a mandatory subject of bargaining is a prohibited labor practice
22 under the provisions of NRS 288.270.

23 9. Use of an employer's vehicles is not enumerated as a mandatory subject of bargaining
24 under NRS 288.150(2).

25 10. The vehicle policy at issue in this case was not significantly related to "employee safety"
26 and thus is not a mandatory subject of bargaining.

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1 11. The County's change to its vehicle policy did not concern one of the mandatory subjects
2 of bargaining, and therefore did not constitute a prohibited labor practice under a "unilateral
3 change" theory.

4 12. Under the parties' collective bargaining agreement, a "grievance" is defined as "a
5 claimed violation, misapplication, or misinterpretation of a specific provision of [the]
6 Agreement."

7 13. The deputies' use of County vehicles is not addressed in the collective bargaining
8 agreement, and a dispute over the vehicle policy does not encompass a claimed violation,
9 misapplication, or misinterpretation of a specific provision of the collective bargaining
10 agreement.

11 14. Because the Association's dispute over the vehicle policy does not address a specific
12 provision of the collective bargaining agreement, the bargained-for grievance procedure is not
13 applicable to the dispute, and the County's refusal to follow the grievance procedure does not
14 constitute a prohibited labor practice under NRS 288.270(1)(e).

15 15. The Association's claim that past-practice had established the use of a take-home vehicle
16 as a term and condition of employment presents only a contractual issue which is outside the
17 jurisdiction of this Board to decide.

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

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ORDER

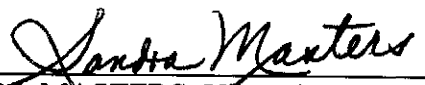
It is hereby ordered that the Board finds in favor of Respondent Pershing County on the claims asserted against it in the complaint, as stated within this Order.

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

DATED this 15th day of November, 2010.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 
SEATON J. CURRAN, ESQ., Chairman

BY: 
SANDRA MASTERS, Vice-Chairman

BY: 
PHILIP E. LARSON, Board Member

1 STATE OF NEVADA
2 LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
3 RELATIONS BOARD
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5 PERSHING COUNTY LAW
6 ENFORCEMENT ASSOCIATION &
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8 NO. 3,

9 Complainant,

10 vs.

11 PERSHING COUNTY,

12 Respondent.

CASE NO. A1-045974

NOTICE OF ENTRY OF ORDER

13 To: Michael E. Langton, Esq.
14 Pershing County Law Enforcement Association & Operating Engineers
15 Local No. 3

16 To: Jim C. Shirley, Esq.
17 Pershing County

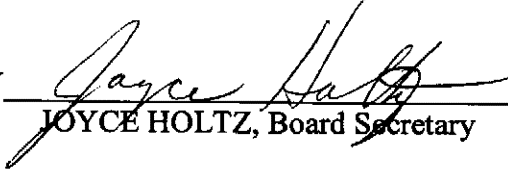
18 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
19 November 15, 2010.

20 A copy of said order is attached hereto.

21 DATED this 15th day of November, 2010.

22 LOCAL GOVERNMENT EMPLOYEE-
23 MANAGEMENT RELATIONS BOARD

24 BY

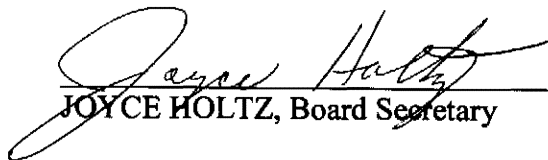

25 JOYCE HOLTZ, Board Secretary
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 15th day of November, 2010, I served a copy of the foregoing
4 ORDER by mailing a copy thereof, postage prepaid to:

5 Michael E. Langton, Esq.
6 801 Riverside Dr.
7 Reno, NV 89503

8 Jim C. Shirley, Esq.
9 Pershing County District Attorney
10 400 Main Street
11 PO Box 934
12 Lovelock, NV 89419

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JOYCE HOLTZ, Board Secretary