

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

5 SERVICE EMPLOYEES INTERNATIONAL)
6 UNION, LOCAL 1107,)

7 Complainant,)

8 vs.)

9 CLARK COUNTY,)

10 Respondents,)
11

ITEM NO. 760A

CASE NO. A1-046017

ORDER

12 For Complainant: Michael A. Urban, Esq. and Jonathan Cohen, Esq., for Service Employees
13 International Union, Local 1107.

14 For Respondent: Yolanda T. Givens, Esq., for Clark County

15 On the 6th day of March, 2012, this matter came on before the State of Nevada, Local
16 Government Employee-Management Relations Board ("Board"), for consideration and decision
17 pursuant to the provisions of the NRS and NAC chapters 288, NRS chapter 233B, and was
18 properly noticed pursuant to Nevada's open meeting laws.

19 This order is issued pursuant to NAC 288.410 and NRS 233B.120.

20 Petitioner Service Employees International Union, Local 1107, ("SEIU") filed this
21 petition for a declaratory order seeking a determination of the applicability of this Board's prior
22 order in Item 713A to three factual issues. First, SEIU requests a determination that employee
23 Marcus Majors was within the class of employees for whom this Board ordered a make-whole
24 remedy in Item 713A, and that Respondent Clark County ("County") did not properly reinstate
25 Mr. Majors. Second, SEIU requests a determination that the manner in which the County went
26 about restoring vacation days to the employees covered by Item 713A was not in compliance
27 with Item 713A. Finally, SEIU requests a declaration that the manner in which the County
28

1 restored health benefits to the employees covered by Item 713A was not in compliance with that
2 order.

3 In Item 713A, this Board found that Clark County had committed a prohibited labor
4 practice in violation of NRS 288.270(1)(e) by unilaterally changing the procedures for
5 conducting a reduction in force, which is a mandatory subjects of bargaining under NRS
6 288.150(2)(v). In particular, this Board found that the bargained-for layoff procedure allowed the
7 County to exempt 8% of its employees from layoff, and that the County would apply 5 agreed-
8 upon factors to evaluate whether an employee should be exempted from layoff. In that case, the
9 Board found that the County had changed the layoff procedure by unilaterally considering
10 factors other than the 5 agreed-upon factors when exempting employees from layoff.

11 As a result of the prohibited labor practice, this Board issued a make-whole order that
12 stated:

13 Clark County shall offer to each employee that was subject to
14 the June 2009 layoffs full reinstatement to their former jobs
15 or, if those jobs no longer exist, to substantially equivalent
16 positions, without prejudice to their seniority or any other
17 rights or privileges previously enjoyed. Clark County shall
also make each laid-off employee whole for any loss of
earnings and loss of other benefits suffered as a result of the
unilateral change committed by Clark County.

18 Service Employees, Int'l Union, Local 1107 v. Clark County, Item No. 713A, EMRB
19 Case No. A1-045965, (October 5, 2010).

20 Marcus Majors

21 Following the Board's order in Item 713A, the County and SEIU met and conferred to
22 decide how to implement the Board's order. Marcus Majors had been a Principal Transportation
23 Planner in the Comprehensive Planning Department and was laid-off in June of 2009. In the
24 wake of Item 713A, the County offered to reinstate Marcus Majors to a new stand-alone position
25 in the Department of Public Works. Following this reinstatement, Marcus Majors was placed in a
26 conference room along with a number of other reinstated employees and given no work
27 assignments other than a temporary assignment to assist the County's operations in running the
28 2010 general elections. Approximately two weeks after reinstatement, Marcus Majors was

1 subject to another round of layoffs and was laid off from his position in the Department of Public
2 Works.

3 In this petition, SEIU is asking the Board to declare that Marcus Majors was subject to
4 the reinstatement order in Item 713A. SIEU also seeks a declaration that the County's
5 reinstatement of Marcus Majors did not comply with the remedy ordered by the Board in Item
6 713A, as Marcus Majors was not reinstated to his previous position in Comprehensive Planning
7 and was instead placed in a new position in Public Works. SEIU argues that Mr. Majors's prior
8 position still existed in Comprehensive Planning, and that Mr. Majors should have been
9 reinstated there, rather than to Public Works. SEIU also asserts that the reinstatement of Marcus
10 Majors did not comply with the Board's order because the County did not properly credit Marcus
11 Majors with his seniority, and had Mr. Majors been properly reinstated to Comprehensive
12 Planning, his existing seniority would have been sufficient to avoid being subject to the
13 November 2010 layoffs.

14 The County's response is to assert that Marcus Majors was not subject to the Board's
15 order in Item 713A, and that consequently the County had no obligation to reinstate Marcus
16 Majors under the conditions ordered by the Board. There is no dispute between the parties that
17 Marcus Majors was laid off in June of 2009. The County characterizes the layoff in
18 Comprehensive Planning that affected Marcus Majors in June 2009 as a simultaneous (and
19 impliedly separate) layoff from the June 2009 layoff in Developmental Services. Where the
20 Developmental Services layoff was tainted by unilateral change as described in Item 713A, the
21 County maintains that there was no evidence of unilateral change to the Comprehensive Planning
22 layoff. The County asserts that the unilateral change in the Developmental Services layoff was
23 traced to the actions of Robert Thompson, who this Board found instigated a misapplication of
24 the 5 agreed-upon factors. In contrast, the County asserts that the exemptions in the
25 Comprehensive Planning layoff were applied by the Director of Comprehensive Planning at the
26 time; a Director named Barbara Ginoulis. Thus, the County concludes, the Comprehensive
27 Planning layoffs are not within the scope of Item 713A, as there was no evidence that the 5-
28 agreed upon factors were misapplied to the Comprehensive Planning layoffs.

1 This Board's make-whole remedy authority is found in NRS 288.110(2) which provides:
2 "[t]he Board, after a hearing, if it finds that the complaint is well taken, may order any person to
3 refrain from the action complained of or to restore to the party aggrieved any benefit of which
4 the party has been deprived by that action." Before making an order this Board must first make a
5 finding that an employee was the victim of a prohibited labor practice. This Board cannot grant
6 relief to an aggrieved employee absent a finding that the employee has been the victim of a
7 prohibited labor practice. City of Henderson v. Kilgore, 122 Nev. 331, 131 P.3d 11 (2006).

8 In Item 713A, this Board traced the prohibited labor practice committed by Clark County
9 to Developmental Services layoff and the occurrence of Robert Thompson unilaterally changing
10 the calculus of the 8% exemptions by considering factors other than, and additional to, the 5
11 agreed-upon factors. Service Employees, Int'l Union, Local 1107 v. Clark County, Item No.
12 713A, EMRB Case No. A1-045965, (October 5, 2010).

13 In Item 713A, the Board heard evidence and decided that the County's prohibited labor
14 practice affected employees in the Civil Division of the Department of Developmental Services.
15 Evidence at the hearing in the present case established that Marcus Majors was not an employee
16 of the Civil Division that was affected by Robert Thompson's actions. Rather, Marcus Majors
17 was an employee in the Comprehensive Planning Department. Evidence at the hearing
18 established that the exemptions used in Comprehensive Planning were not applied by Robert
19 Thompson, but were applied by Barbara Ginoulias. The Board heard no evidence, either when
20 deciding Item 713A or in the present case, that Ms. Ginoulias had changed the criteria for
21 assigning exemptions. Thus, there is no discernable nexus to trace the exemptions used in the
22 Comprehensive Planning layoffs to the unilateral change that this Board found in Item 713A.

23 Accordingly, the Board concludes that Marcus Majors was not within the class of
24 employees affected by the unilateral changes described in Item 713A. As Item 713A concerned
25 the Developmental Services layoff and made no finding that Marcus Majors was deprived of any
26 benefit due to the unilateral change, Marcus Majors is not within the scope of employees that this
27 Board ordered to be made-whole in Item 713A. Therefore, and in answer to the first question

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1 posed by SEIU's petition, the Board declares that Marcus Majors was not within the class of
2 employees for whom this Board ordered a make-whole remedy in Item 713A.

3 As Clark County was not required by Item 713A to reinstate Marcus Majors, SEIU's
4 contentions that Majors was not properly reinstated to his former job or properly credited with
5 his seniority pursuant to the remedy ordered by Item 713A are moot.

6 Vacation Leave

7 SEIU asserts, and seeks a declaration from this Board, that the County failed to properly
8 credit the laid-off employees who were ordered reinstated by Item 713A with the vacation time
9 that they would have accrued during the period of their wrongful separation from County
10 employment. Evidence at the hearing established that the reinstated employees were capped at a
11 total of 240 hours of vacation leave upon reinstatement, even though their rate of accrual over
12 the period of June 2009 until November of 2010 when the reinstatements took place would have
13 otherwise exceeded 240 hours. The County does not dispute that vacation leave was capped at
14 240 hours, and insists that NRS 245.210(2)(a) limits the amount of vacation leave that the
15 County could credit back to the employees.

16 The purpose of a make-whole remedy under NRS 288.110(2) is remedial and is aimed to
17 restore to affected employees the benefits of which they have been deprived by an employer's
18 unlawful acts. NRS 288.110(2): see also NLRB v. J. H. Rutter-Rex Mfg. Co., 396 U.S. 258, 263
19 (1969) (citing Nathanson v. NLRB, 344 U.S. 25, 27 (1952)).

20 In this case, as the maximum amount of vacation hours was capped at 240 and the
21 reinstated employees would not have been able to exceed 240 hours even in the absence of a
22 prohibited labor practice. The County's restoration of vacation pay did not contravene the make-
23 whole remedy ordered in Item 713A.

24 Health Benefits

25 In implementing the Board's make-whole remedy, the County retroactively deducted
26 health insurance premiums from the compensation it paid to the affected employees. SEIU
27 contends that this was contrary to the Board's order, as it deducted earnings from employees who
28 were not eligible to use the County's health insurance in order to pay the premiums.

1 8. Clark County fully accredited vacation leave of the employees covered by Item 713A up
2 to a maximum of 240 hours.

3 9. Even in the absence of a prohibited labor practice, employee vacation leave would be
4 capped at 240 hours.

5 10. Clark County deducted health insurance premiums from the employees reinstated
6 pursuant to Item 713A.

7 11. Clark County took adequate steps to ensure that employees who were reinstated pursuant
8 to Item 713A, and who had health insurance claims arising between June of 2009 and October of
9 2010 received the benefits of participating in the County's health insurance plan.

10 12. If any of the foregoing findings is more appropriately construed a conclusion of law, it
11 may be so construed

12 **CONCLUSIONS OF LAW**

13 1. Pursuant to NRS 233B.120, this Board has jurisdiction to determine the applicability of
14 Item 713A as requested by SEIU in this petition.

15 2. The unilateral change finding in Item 713A addressed the Developmental Services
16 layoffs of June 2009.

17 3. Marcus Majors was not within the class of employees affected by the County's unilateral
18 change in Item 713A.

19 4. The County was not obligated by Item 713A to reinstate Marcus Majors.

20 5. The County's actions of capping restored vacation leave to reinstated employees at 240
21 hours was not inconsistent with the make-whole remedy ordered in Item 713A.

22 6. The County's actions of deducting health insurance premiums from reinstated employees
23 was not inconsistent with the make-whole remedy ordered in Item 713A, where the County also
24 took reasonable steps to afford the benefits of participation in the health insurance plan to the
25 same employees.

26 7. If any of the foregoing conclusions is more appropriately construed a finding of fact, it
27 may be so construed.

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1 **DECLARATORY ORDER**

2 IT IS HEREBY ORDERED and DECLARED that Clark County was not required by
3 Item 713A to reinstate Marcus Majors;

4 IT IS FURTHER ORDERED and DECLARED that Clark County did not violate Item
5 713A by the manner in which it restored vacation leave to reinstated employees;

6 IT IS FURTHER ORDERED and DECLARED that Clark County did not violated Item
7 713A by the manner in which it restored health benefits to reinstated employees.

8 DATED this 19th day of March, 2012.

9 LOCAL GOVERNMENT EMPLOYEE-
10 MANAGEMENT RELATIONS BOARD

11 BY: 
12 SEATON J. CURRAN, ESQ., Chairman

13 BY: 
14 PHILIP E. LARSON, Vice-Chairman

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CASE NO. A1-046017

NOTICE OF ENTRY OF ORDER

12 To: Michael A. Urban, Esq. and Jonathan Cohen, Esq., for Service Employees
13 International Union, Local 1107.

14 To: Yolanda T. Givens, Esq., for Clark County

15 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on
16 March 19, 2012.

17 A copy of said order is attached hereto.

18 DATED this 19th day of March, 2012.

19 LOCAL GOVERNMENT EMPLOYEE-
20 MANAGEMENT RELATIONS BOARD

21 BY


22 JOYCE A. HOLTZ, Executive Assistant

