

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 14<sup>th</sup> 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

1 requires that its firefighters achieve a level of EMT-I (intermediate)<sup>1</sup> for its firefighters, and so  
2 specified that requirement when it offered employment to Mr. Eason. There are three levels of  
3 EMT certification: EMT-Basic, EMT-I and EMT-P. The Board heard evidence that the lower  
4 level EMT certifications are effectively pre-requisites to obtaining a higher level. Thus an  
5 individual must first pass off EMT-Basic before obtaining EMT-I certification. At the time that  
6 Mr. Eason accepted employment with Clark County he had not yet achieved any level of EMT  
7 certification, but this did not preclude his employment. The County has adopted a merit  
8 personnel system that establishes a one-year probationary period. The probationary period of one  
9 year is also reflected in the collective bargaining agreement between the County and the  
10 International Association of Firefighters, Local 1908. The County allowed Mr. Eason to obtain  
11 the necessary certifications including EMT-I during this probationary period.  
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14 Newly hired firefighters with the County first must pass through initial training called  
15 rookie school. The rookie school is a physically demanding course intended to immerse new  
16 firefighters into the job duties of a firefighter by teaching and testing on the skills of the job. As  
17 part of rookie school Eason and his classmates were given a handbook of instructions, which  
18 included an admonition not to perform any outside training for the duration of the rookie school.  
19 Eason successfully completed rookie school in December of 2012.  
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21 Eason began work on obtaining his EMT-Basic certification upon completion of rookie  
22 school in January of 2013. The collective bargaining agreement between the County and Local  
23 1908 specifies that the County covers the expenses of training for required certifications and the  
24 County did arrange for Eason to attend an EMT-Basic course through the EMS Training Center  
25 of Southern Nevada. The EMT-Basic course lasted from January 4, 2013 to July 5, 2013. At the  
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28 <sup>1</sup> 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.

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

3 As of July of 2013, the County found itself in the unwelcome position that Mr. Eason was  
4 on the cusp of completing his probationary status, but so without having obtained the necessary  
5 EMT-I certification. At the hearing Fire Chief Bertral Washington testified that this was a unique  
6 circumstance as the County had only recently begun the practice of accepting firefighter  
7 applicants that did not already possess EMT certifications and allowing those employees to  
8 obtain the necessary certifications on the job after being hired. Chief Washington expressed  
9 some frustration that the County had not developed and implemented a training plan that would  
10 have allowed Mr. Eason to be able to train and obtain both his EMT-Basic and EMT-I  
11 certifications within the probationary period.  
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14 The County's solution to this dilemma was to approach Eason (and one other firefighter  
15 who was in the same predicament) and agree to an arrangement that would extend their  
16 employment for four months to allow them to obtain the EMT-I certification. On the eve of  
17 Eason's one-year anniversary of employment, the County entered into an "Amended Condition  
18 of Employment" agreement with Mr. Eason. That agreement states: "The Clark County Fire  
19 Department was unable to arrange/schedule/secure EMT-I training for Nicholas Eason within 12  
20 months from the date of his Condition of Employment Agreement. Therefore Clark County Fire  
21 Department will extend employee four (4) months from the date of this Amendment to obtain the  
22 EMT-A (in lieu of EMT-I) Certification." That same document also required Eason to expressly  
23 waive his future right to file a grievance if he were to be terminated for failing to obtain his  
24 EMT-I certificate within the four months. The document was signed by Eason, Chief  
25 Washington and Local 1908 Vice President Mike Afanasiv. Mr. Afansiv was present as a  
26 witness representing Local 1908.  
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1 The County then arranged for an accelerated EMT-I course for Mr. Eason. At the end of  
2 the four months Eason had not completed his EMT-I certification.

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

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14 Eason first alleges in this matter that the County's actions at the July 22, 2013 meeting  
15 and the ensuing Amended Conditions of Employment agreement were in violation of NRS  
16 288.270(1)(a). This subsection states that it is a prohibited labor practice to interfere, coerce or  
17 restrain an employee in the exercise of any right guaranteed under the Act. We find that the  
18 County's actions in this case did not coerce Mr. Eason concerning his rights under the Act. The  
19 unfortunate reality of the situation at that time was that Mr. Eason did not have the required  
20 certification, and as a probationary employee he could have been dismissed on that basis alone at  
21 the July 22, 2013 meeting. The certifications are vital and as of July 22, 2013 Eason had no  
22 apparent options to continue his career as a Clark County firefighter. But in that meeting the  
23 County gave him one by giving him the additional four months to obtain his EMT-I certification.  
24 In this, we do not see any coercion by the County. And even though the County required Eason  
25 to waive his right to file a grievance should he be terminated for failing to obtain the  
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1 certification, we do not see any meaningful distinction between this action and a last-chance type  
2 of agreement. Therefore we do not see a prohibited labor practice under NRS 288.270(1)(a).

3 Nor do we see a violation of NRS 288.270(1)(a) arising out of the subsequent November  
4 22, 2013 meeting. Pursuant to the Amended Employment Agreement that Eason had previously  
5 accepted, he agreed that he would have his EMT-I certification by November 22, 2013 or be  
6 terminated. He decided at that point to resign in order to best further his career. While the terms  
7 of the resignation were not truly voluntary, that alone does not rise to the level of a prohibited  
8 labor practice under NRS 288.270(1)(a). Eason points to a prior decision of this Board in  
9 Spannbauer v. City of North Las Vegas, Item No. 636C, EMRB Case No. A1-045885 (June 25,  
10 2008), and urges the Board to find a prohibited labor practice based upon the coerced resignation  
11 that occurred in Spannbauer. But this case is distinguishable from Spannbauer. Spannbauer  
12 does not say that a coerced resignation is a *per se* violation of NRS 288.270(1)(a). Notably, the  
13 coerced resignation in Spannbauer was coupled with misrepresentations that the officer in that  
14 case could be non-confirmed rather than have recourse to his grievance rights. In this case, there  
15 was no evidence of any dishonesty by the County concerning Eason's right to file a grievance.  
16 His inability to bring a grievance had been established by the Amended Condition of  
17 Employment Agreement. Additionally, when this Board found that resignation was thrust upon  
18 the police officer in Spannbauer, it was in finding a predicate adverse employment action  
19 necessary for a claim of discrimination based upon sex. In this case, the County could have  
20 terminated Eason of its own accord for failing to obtain the required certification. That the  
21 County did so by means of an involuntary resignation, as opposed to simply terminating him,  
22 does not, in and of itself, establish a violation of NRS 288.270(1)(a).

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

23 Finally Eason claims a unilateral change on the part of the County because the County  
24 did not follow the bargained-for process to discharge a post-probationary employee. Eason  
25 argues that under the collective bargaining agreement, a post-probationary employee such as  
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28 <sup>2</sup> 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.

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

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

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

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28 <sup>3</sup> At the hearing the County agreed that Eason had completed probation prior to the November 22, 2013 meeting.

1 59 P.3d 1212, 1219 (2002). A unilateral change is a prohibited labor practice because it amounts  
2 to a rejection of the most basic of collective bargaining principles. See Sea Bay Manor Home,  
3 253 NLRB 739 (1980). While a unilateral change may factually align with allegations of a  
4 breach of contract, see City of Reno, one distinguishing feature between a breach of contract and  
5 a unilateral change is that under a unilateral change, the employer's action go beyond an isolated  
6 breach of the agreement and imposes a generalized effect or continuing impact upon bargaining  
7 unit members. Grant District Education Association v. Grant Joint Union High School District,  
8 California PERB Decision No. 196, Case No. S-CE-366 (Feb. 26, 1982). This Board has  
9 consistently recognized that disputes asserting only a breach of the agreement, and which do not  
10 rise to the level of a prohibited labor practice, are beyond our authority. Reno Police Protective  
11 Association v. City of Reno, Item No. 16, EMRB Case No. 18273, (Aug. 16, 1974)  
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14 In this case, the County's actions do not reflect a generalized effect or change to the  
15 bargained-for terms of the collective bargaining agreement. The evidence at the hearing  
16 established that Mr. Eason's situation was entirely unique and the County was trying to cope  
17 with these new developments. The County had only just begun hiring firefighters who did not  
18 already possess certifications, and the County was attempting to figure out the logistics for its  
19 new hires to complete all the required certifications within the probationary period. It was these  
20 unique circumstances, as well as the terms of the Amended Condition of Employment, which  
21 applied only to Eason and only in the singular circumstance that Eason had not obtained the  
22 EMT-I certification, that led to Eason's dismissal. We see no evidence of any sort of broader  
23 application to any employee in the bargaining unit other than Mr. Eason. Consequently under the  
24 evidence presented in this case we see no conduct by the County that transcends a mere breach  
25 of the agreement and rises to the level of a unilateral change.  
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1 The Board has determined that an award of costs to the prevailing party is not appropriate  
2 in this case and that each party shall therefore bear its own fees and costs. NRS 288.110(6).

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

4 **FINDINGS OF FACT**

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

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

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

12 4. At the time Eason was hired by the County he did not have any EMT  
13 certifications. The County's offer of employment specified that Eason was to obtain his EMT-I  
14 certification within 12 months of hire.  
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16 5. Eason was initially assigned to rookie school and completed rookie school in  
17 December of 2012.

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

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

25 9. On July 22, 2013 the County met with Eason and with Local 1908 Vice President  
26 Mike Afonasis to execute an Amended Condition of Employment agreement.  
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1           10.     Mr. Afonasiv was present at the July 22, 2013 meeting in his capacity as a union  
2 official, and signed the Amended Condition of Employment agreement as a witness.

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

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

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

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

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

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

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

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

16           19.     If any of the foregoing findings is more appropriately construed as a conclusion of  
17 law, it may be so construed.

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21                           **CONCLUSIONS OF LAW**

22           1.     The Board has exclusive jurisdiction over alleged prohibited labor practices under  
23 the Act.

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

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

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

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

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

9           7.     The County did not engage in direct dealing with Eason on July 22, 2013 because  
10 it did not make any communications that were to the exclusion of Local 1908.

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

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

16           10.    Eason's resignation was involuntary.

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

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

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

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

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

5 16. If any of the foregoing conclusions is more appropriately construed as a finding of  
6 fact, it may be so construed.  
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8 **ORDER**

9 Based upon the foregoing and for the reasons stated above, it is hereby ordered that the  
10 Board finds in favor of Clark County on all claims asserted against it;

11 It is further ordered that each party shall bear its own fees and costs incurred in this  
12 matter.  
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14 DATED this 25th day of November, 2014.

15 LOCAL GOVERNMENT EMPLOYEE-  
16 MANAGEMENT RELATIONS BOARD

17 BY: 

18 PHILIP E. LARSON, Chairman

19 BY: 

20 BRENT ECKERSLEY, ESQ., Vice-Chairman

21 BY: 

22 SANDRA MASTERS, Board Member  
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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, Executive Assistant

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YVONNE MARTINEZ, Executive Assistant