STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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| EDUCATION SUPPORT EMPLOYEES ASSOCIATION and POLICE OFFICERS ASSOCIATION OF THE CLARK COUNTY SCHOOL DISTRICT,<br><br>Complainants,<br><br>vs.<br><br>CLARK COUNTY SCHOOL DISTRICT,<br><br>Respondent. | CASE NO. A1-046113<br><br>ORDER<br><br>**ITEM NO. 809** |

This matter came on before the State of Nevada, Local Government Employee-Management Relations Board ("Board"), on October 13, 2015, for decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act"); NAC Chapter 288 and NRS chapter 233B. The Board held a hearing on this matter on June 10-11, 2015 and October 12-13, 2015.

Complainant Police Officers Association of the Clark County School District ("the Association") is the recognized employee organization representing police officers employed by Respondent Clark County School District ("the District"). The incidents that are at issue in this case concerned the negotiations for a collective bargaining agreement for the 2013-2014 fiscal year.

In this case the Association charges the District with a failure to bargain in good faith, both by its conduct surrounding the negotiating sessions between the parties, and in the refusal to meet with the Association to address disputes about the proposed contractual language.

In 2013 the parties' first negotiating session was held on June 17, 2013. Between June and September of 2013 the parties would meet a total of six times. As explained by the District's chief negotiator Dr. Edward Goldman, the District's approach to these negotiations was that it would

listen to proposals from the Association, but the negotiating team would not respond during that bargaining session. Instead the District's bargaining team would then consult with the Superintendent and the Board of Trustees about whether to agree to the proposal or not. Dr. Goldman testified that in this manner the District would either accept or reject a proposal. As a general rule the District did not make proposals or counterproposals, and the Board heard no evidence of any District proposals in this round of negotiations.

The second negotiating session on June 19, 2013 revolved entirely around the issue of health insurance benefits. During this session, the Association brought a subject matter expert to discuss health insurance benefits. At this session the Association raised the issue of group health insurance and the previously negotiated amount of the District's contribution toward health insurance. The Association also expressed a concern about the escalating amount of insurance premiums and how the District's contribution rate factored into the equation. According to testimony before the Board, the Association was contemplating seeking out its own insurance plans for its members. The Association made a proposal at this session to which the District responded consistent with its general attitude toward bargaining that it would consult the School Board and have an answer at the next negotiating session. During the fourth negotiating session on July 25, 2013, the Association raised some proposals to the language in Article 22, which is the article governing group health insurance, but ultimately tabled the group health insurance issue for the time being.

The six negotiating sessions yielded a partial agreement. According to the testimony of Association Vice-President Michael Thomas, the parties had agreed upon most issues, but still had not reached an agreement on four outstanding issues at the conclusion of the sixth negotiating session, including Article 22 of the agreement that addressed group health insurance. The parties decided at that time to go ahead and formalize an agreement treating those issues that had been agreed upon, and including within that agreement a provision that allowed for continued bargaining in small groups over the unresolved issues, which could be pursued by either party through arbitration if an agreement on those issues could not be reached. This sixth negotiating session was held on September 18, 2013. On September 24, 2013, Dr. Goldman presented a draft

of the proposed agreement to the School Board for their review and preliminary approval. This draft agreement included a new article, Article 42, which stated "Upon execution of this agreement the parties agree to form working groups to discuss non-economic matters." The School Board gave its preliminary approval to this draft of the contract. The Board did not see any evidence that the Association had either consented to or objected to the language in the District's version of the proposed agreement before it was submitted to the School Board on September 24, 2013.

Meanwhile the Association was also crafting its own version of the agreement, including language to reflect the agreement reached at the sixth negotiating session to provide for further small-group negotiations. On October 1, 2013, Vice President Thomas provided Dr. Goldman with the draft language that was proposed by the Association. The Association's version of the agreement did not include an Article 42, but included language in Article 1, Article 4, Article 22, and Article 30 to the effect that those articles would go to a committee for further negotiation. The Association's proposed language did not refer to these items as "non-economic matters."

The next day, October 2, 2013, the District sent an email to Gerald Lange, who had been the chief spokesperson for the Association during the negotiating sessions, with the District's proposed version of the agreement attached. But Mr. Lange had at this point removed himself from negotiations and was out of the state. Mr. Lange responded to the District that they should instead direct their communications to either Vice President Thomas or Association President Erik Aldays. On October 3, 2013, the parties exchanged a series of emails concerning the proposed contractual language. Vice President Thomas contacted the District that morning by email and asked the District to provide its final proposed language, so that the Association could present the contract to its membership for ratification. At 9:45 that morning the District provided its draft of the agreement to Vice President Thomas the same day. The version of the agreement that the District provided included Article 42.

Vice President Thomas then responded shortly after 11:00 a.m. by email, stating "I think we need another meeting with the District. The final Article # 42 says that we will agree to continue discussions on only those mandatory (non-financial items). The items that we want to continue talking about after ratification would certainly be financial in that PERS, Health Insurance and the

grievance process (of putting officers on suspension with or without pay) would certainly impact the District financially." Respondent's Ex. 21.

The District responded by stating that the School Board had already approved the District's version of the contract and that no substantive changes would be made. The meeting to discuss the contract language in Article 42 that was requested by Vice President Thomas never happened, and the District adopted the posture that the language of Article 42 in its version of the agreement was the final language of the agreement whether or not the Association agreed to it, subject only to editorial changes.

The Association did not consent to the language in Article 42, but neither did it vigorously contest the issue. Inexplicably, the Association's next move was to submit a draft of the contract to its membership for ratification. But the draft of the contract submitted by the Association was not the same draft that had been preliminarily approved by the School Board. Instead the Association submitted a draft that contained the Association's proposed language stating that Articles 1, 4, 22, and 30 would go to a committee for negotiation and omitted Article 42. The District was not privy to this internal ratification process. The Association then informed the District that its membership had ratified the agreement. Thereupon the School Board formally ratified the District's version of the agreement at its November 14, 2013, meeting. Nobody from the Association spoke at the School Board's meeting to discuss or oppose this ratification. But on December 5, 2013, the Association wrote to the District to renew its objection that had been stated on October 3, 2013, complaining that the Article 42 language contained in the agreement was unacceptable. This prohibited labor practice alleging a failure to bargain in good faith then ensued.

The Act imposes a reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the mandatory subjects of bargaining listed in NRS 288.150. Refusal to bargain in good faith by either party is a prohibited labor practice. NRS 288.270(1)(e) and (2)(b). The duty to bargain in good faith does not require that the parties actually reach an agreement, but does require that the parties approach negotiations with a sincere effort to do so. City of Reno v. International Assoc. of Firefighters, Local 731, Item No. 253-A, Case No. A1-045472 (Feb. 8, 1991). "The determination of whether there has been such sincerity is made by drawing inferences from

conduct of the parties as a whole." Id. (quoting NLRB v. Insurance Agent's International Union, 361 U.S. 488 (1970). The evidence in this case shows by a preponderance that the District failed to negotiate in good faith.

The District's Attitude Toward Negotiations

When Dr. Goldman testified and explained the District's approach to bargaining in this case he explained that he would listen to the Association's proposals, but rather than agree to a proposal or make a counterproposal at the bargaining table, he would take the Association's proposals to the School Board for their consideration. This need to consult with the School Board before negotiating on any of the Association's proposals raises the question whether the District's negotiation team actually had much authority, if any at all, to negotiate with the Association's bargaining team. NRS 288.150(1) requires the District to negotiate with the Association "through one or more representatives of its own choosing," in other words, through its bargaining team. This section contemplates that the fundamental negotiations process will occur at the bargaining table between the designated bargaining teams, thus enabling the give-and-take that encourages successful negotiations. In this case, that fundamental process was removed from the bargaining table to the board room when the merits of the Association's proposals were considered by the School Board rather than the bargaining team. Dr. Goldman seems to have acted more as an intermediary or messenger for the School Board than as its designated negotiator. The Act does not require that the School Board be kept in the dark as to the negotiations, but the failure to designate an agent, or bargaining team with negotiation authority is a significant indicator of bad faith bargaining, which we find points toward a finding of bad faith in this case. Fitzgerald Mills Corp., 133 NLRB 877 (1961).

The Board heard testimony that the District approached negotiations with the stance that it refused to make any proposals or counterproposals during negotiations. This, too, is a well-recognized indicator of bad faith bargaining. See e.g., United Technologies Corp., 296 NLRB 571, 572 (1989). Both of these factors taken together establish that the District's overall approach to bargaining in this case was tainted by a refusal to bargain in good faith.

The Association also points to what it claims to be the District's failure to provide it with information and updates about the District's ongoing efforts to separately negotiate its health plan options with a private health-insurance provider. According to the Association, it was kept in the dark about the contemplated plan changes and premium increases that were being discussed, thus preventing it from meaningful bargaining over insurance benefits under NRS 288.150(2)(f). While the duty to provide requested information during negotiations is an imperative of the Act, NRS 288.180, we do not see this issue as an indicator of bad faith bargaining in this case because the District did provide the information that was actually requested by the Association and the Association was aware that the District's health insurance contract was expiring at the end of the year, and premium increases were on the horizon. The minutes from the second negotiation session clearly reflect that the District conveyed this information to the Association. If the Association felt that it needed additional information to assist it in negotiations, it had the right to request such information from the District. The District did not volunteer the information about its negotiations with the private health insurance provider, but the Board saw no evidence that the District actively misled or deceived the Association about these negotiations.

The District's Refusal to Meet After the Sixth Negotiating Session

After the sixth negotiating session on September 18, 2013, the parties appeared at first glance to have reached a consensus for reaching an agreement, despite the District's approach to bargaining. As reflected in the notes from the sixth negotiating session, the parties would enter into a new one year contract that encompassed all but four outstanding issues: the health insurance benefits, workers compensation matters, PERS and matters concerning employee suspension without pay. The parties agreed that after ratification of the new agreement, the parties would continue to negotiate these four items in small groups and that either party could pursue to matter to arbitration.

However, it is apparent from the evidence that the parties had not in fact reached a meeting of the minds concerning the further negotiations of these four items. This is evident from the parties' dispute about the proper language of Article 42. The Association did not object to the

District's suggestion to include a new article at the end of the agreement providing for continued negotiations, as opposed to the language in the Association's draft that specified additional negotiations under four separate articles. The disagreement was over the District's version of the agreement that provided that continued negotiations would only encompass "non-economic matters." The Association expressed its understanding that negotiations would encompass matters that were economic and did have a financial impact, including the health insurance provisions in Article 22 that are at issue in this case. As the "non-economic" language purported to limit the scope of further negotiations the Association took this as an attempt by the District to alter the agreement and foreclose further bargaining upon the topics that the Association understood would be bargained in the small groups. Based upon the evidence, we do not see a nefarious purpose behind the District's use of the term "non-economic matters" in its draft of the Agreement. However it is unquestionably clear that this language did not reflect what the Association had understood the agreement to be at the sixth negotiating session. Hence, the parties had not achieved a meeting of the minds and had not arrived at an agreement.

In light of these facts the salient points established by the evidence are that as of October, 2013, the District and the Association had not reached an agreement and that neither party had declared impasse. The issues that were still unsettled at that time included health insurance, which is a mandatory subject of bargaining pursuant to NRS 288.150(2)(f). At this point the parties' options were either to continue to negotiate to reach an agreement or to declare impasse and proceed through the resolution procedure provided for by NRS 288.215. The District did neither. When presented with the Association's request to meet and negotiate the appropriate language for Article 42 the District simply refused.

We take this flat-out refusal to meet with the Association to be an indisputable instance of a failure to bargain in good faith. On October 3, 2013, the District was plainly made aware by Mr. Thomas of the Association's concerns that the proposed contractual language did not accurately reflect the parties' agreement at the sixth negotiating session and that additional negotiations were needed. The Act does not permit an employer to simply refuse a bargaining agent's request for negotiations concerning a mandatory subject of bargaining. City of Reno v. Reno Police

Protective Ass'n, 98 Nev. 472, 653 P.2d 156 (1982); NRS 288.150(1); NRS 288.270(1)(e). The District's refusal of the Association's request in this case is an instance of an employer's failure to bargain good faith in the clearest sense.

The District's actions are not excused by the Association's subsequent actions, which occurred approximately one month later. The Association contends that this dispute could have been averted if the District had simply complied with its obligations under the Act to negotiate when it was informed of the Association's dispute concerning the language in Article 42. This is true. However, the Association's actions also exacerbated the issues in this case. The Board was never provided with a satisfactory explanation as to why the Association, which as of October 3, 2013 was aware of the District's stance on its draft of Article 42, would then present a different version of the agreement to its members for ratification. There was no evidence that the District had assented to the Association's proposed contractual language. This action is essentially the same action that the Association claims was bad faith bargaining on the part of the District. Nor was there a satisfactory explanation provided as to why the Association then reported ratification of the agreement to the District, thus inducing the District to present its version of the contract to the School Board for final approval. We were not presented with a counterclaim alleging bad-faith bargaining by the Association, which precludes us from now finding that the Association was guilty of the same charge leveled against the School District. Even though we do not find bad faith bargaining by the Association, the Board's decision should not be construed as approval of the Association's conduct in this case. Rather it seems that a modicum of professionalism and good faith on the part of both parties could have easily avoided this dispute and resulted in the successful negotiation of a collective bargaining agreement. The Board also finds that under these circumstances an award of costs in favor of the Association would be unjust.

The District also pointed to the fact that the Association's leadership was not present at the November 14, 2013, School Board meeting to object to the School Board's consideration of the agreement. The District noted that the material for that meeting had been publicly available in advance of that meeting; hence the Association should have known that the School Board would be considering the draft of the agreement that included Article 42. While the Association's inaction

was probably less-than-diligent, the Act does not require the Association to object, nor does it excuse the District's prior instances of failure to bargain in good faith.

Given the finding that the District committed a prohibited labor practice by refusing to bargain in good faith with the Association, as outlined above, we turn to the remedy for this violation. NRS 288.110(2) authorizes the Board to restore to the party aggrieved any benefit of which the party has been deprived by a prohibited labor practice. The Board finds, based upon the evidence, that the benefit of which the Association was deprived was a procedural benefit; namely the ability to continue to negotiate health benefits through the agreed-upon small groups with the option of arbitration that was reached at the sixth negotiating session. We will restore that benefit by ordering the parties to meet in these small groups to resolve the health benefits issue for the 2013-2014 contract, and to participate in arbitration if that option is pursued by either party. The Board is aware that the health plan coverage for this timeframe has already transpired. However we find that the parties did not restrict their small-group negotiations to non-economic matters and thus the financial aspects of this agreement are still negotiable. In these small-group negotiations, the District shall designate a bargaining team with authority to negotiate. As this order is effectively an order to resume negotiations, we do not intend to inhibit the give-and-take inherent in negotiations or restrict the parties' options for reaching any other mutual agreement to address the health benefits issue for the 2013-2014 contract.

We decline to order the financial remedy requested by the Association for reimbursement for the increased health insurance premiums from January – June 2014. The evidence is too speculative in our view to support this outcome. Such an order would require the Board to attempt to predict the outcome of those small group negotiations that never occurred.

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

## FINDINGS OF FACT

1. The Association is the recognized bargaining agent for police officers employed by the Clark County School District.

2. When negotiating an agreement for the 2013-2104 fiscal year, the Association and the District held a total of six negotiating sessions.

3. When approaching the negotiations in this case, the District's negotiating team did not make proposals or counterproposals and would consider the Association's proposals after consulting with the School Board and Superintendent.

4. The second negotiation sessions, held on June 19, 2013, concerned issues affecting group health insurance.

5. The Association again raised the issue of group health insurance at the fourth negotiating session held on July 24, 2013, but tabled discussion of that issue for the time being.

6. At the sixth negotiating session held on September 18, 2013, the parties had reached a tentative agreement on the majority of issues being negotiated. There were four remaining issues: group health insurance, PERS, the disciplinary process and issues related to workers' compensation. The parties agreed to finalize a contract covering the items that had been agreed upon, and include a provision that allowed for continued negotiation in small groups over the items that had not yet been agreed upon. This included the option of either party pursuing arbitration to finalize the terms. The parties did not agree to restrict these small group negotiations to only non-economic matters.

7. On September 24, 2013, Dr. Goldman presented a version of the contract to the School Board for preliminary approval. The version of the agreement submitted to the School Board included a new article, Article 42, which contemplated continued negotiations over "non-economic matters." The School Board granted preliminary approval of this draft of the agreement.

8. On October 1, 2013, the Association presented its proposed contractual language providing for continued small-group negotiations to the District. The Association's proposed language did not include an Article 42 and did not limit negotiations to non-economic matters.

9. On October 2, the District provided a copy of its version of the agreement to Mr. Lange.

10. On October 3, Vice President Thomas contacted the District about its draft of the proposed language. The District responded by providing him with a copy of the agreement that had been preliminarily approved by the School Board.

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11. On October 3, 2013, Vice President Thomas informed the District that the Association objected to the language in Article 42, and requested a meeting with the School District to negotiate the appropriate language for Article 42.

12. The District refused the Association's request to negotiate the language of Article 42.

13. As a result of the District's failure to bargain in good faith, the Association was deprived of the benefit of negotiating group health benefits (Article 22) pursuant to the procedure agreed upon at the sixth negotiating session.

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

## CONCLUSIONS OF LAW

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

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

3. NRS 288.150(1) requires a local government employer to designate an individual or team to negotiate with a recognized bargaining agent.

4. The Association and the District are each obligated by the Act to bargain in good faith.

5. The Board evaluates an allegation of bad faith bargaining by looking to the parties conduct as a whole.

6. The District's failure to bargain in good faith is evidenced by its refusal to designate a bargaining agent or team with sufficient authority to negotiate, and its stance that refused to make any proposals or counterproposals.

7. The dispute over the contractual language in this case included health insurance benefits, which is a mandatory subject of bargaining under NRS 288.150(2)(f).

8. The term "non-economic matters" as used in the District's proposed Article 42 is a material term in this case.

9. The District's refusal to bargain with the Association over the language in Article 42

is a failure to bargain in good faith in violation of NRS 288.270(1)(e).

10. The Association's ratification vote occurred subsequent to the District's refusal to bargain in good faith and does not excuse the District's refusal in this case.

11. The Association's complaint is well-taken.

12. The remedies identified in this decision and order are intended to effectuate the policies and purposes of the Act.

13. An award of fees and costs is not warranted in this case.

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

## ORDER

Based upon the foregoing, and as stated above, it is hereby ordered that the parties shall participate in negotiations over the group health insurance provisions, including arbitration if pursued by either party, as set forth above. It is further ordered that each party shall participate in these negotiations through representatives of its own choosing.

DATED this 20th day of October, 2015.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY: _____
PHILIP E. LARSON, Chairman

BY: _____
BRENT C. ECKERSLEY, Vice-Chairman

BY: _____
SANDRA MASTERS, Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

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| EDUCATION SUPPORT EMPLOYEES ASSOCIATION and POLICE OFFICERS ASSOCIATION OF THE CLARK COUNTY SCHOOL DISTRICT,<br><br>Complainants,<br><br>vs.<br><br>CLARK COUNTY SCHOOL DISTRICT,<br><br>Respondent. | CASE NO. A1-046113<br><br>**NOTICE OF ENTRY OF ORDER** |

TO: Police Officers Association of the Clark County School District (hereinafter POA) and its attorney of record, Adam Levine and Law Office of Daniel Marks, Esq.;

TO: Clark County School District (hereinafter CCSD) and its attorneys of record, Carlos McDade, Esq., and the Office of the General Counsel, Clark County School District, and Whit Selert, Esq.

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on October 20, 2015.

A copy of said order is attached hereto.

DATED this 20th day of October, 2015.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

BY _____

MARISU ROMUALDEZ ABELLAR
Executive Assistant

## CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 20th day of October, 2015, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Adam Levine, Esq.
Law Office of Daniel Marks
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MARISU ROMUALDEZ ABELLAR
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