STATE OF NEVADA

LOCAL GOVERNMENT EMPOLOYEE-MANAGEMENT

RELATIONS BOARD

LAS VEGAS PEACE OFFICERS ASSOCIATION Complainants, v. CITY OF LAS VEGAS, Respondent.	Case No. 2015-034 **ORDER** **ITEM NO. 821**

On February 7, 2017, this matter came before the State of Nevada, Local Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government-Management Relations Act (the "Act"), NAC Chapter 288 and NRS Chapter 233B. The Board held an administrative hearing on this matter on November 15, 2016 in Las Vegas, Nevada. The Board accepted post-hearing briefs in this matter as well.

In its Amended Petition for Declaratory Order (Re-filed as a Complaint), Complainant Las Vegas Peace Officers Association ("LVPOA") claims that by refusing to recognize certain concessions that sufficiently funded administrative leave in the amount of 1,800 hours per year, the City of Las Vegas (the "City") has acted in bad faith in violation of its duty to bargain in good faith per NRS 288.270(1). Moreover, LVPOA claims that by the City's actions of continuing to require LVPOA to pay for administrative leave hours at $65/hour, the City has acted in bad faith also in violation of its duty to bargain in good faith per NRS 288.270(1). LVPOA's Reply Brief in this matter requests the Board to find that "LVPOA prefunded Association Leave Hours at 1800 hours per year for over 30 years when it gave economic concessions to the City of Las Vegas in the 2010/2011 negotiations".

In 2002, LVPOA negotiated its first collective bargaining agreement ("CBA") with an effective end date in 2007 ("2002-2007 Agreement"). This agreement contained an evergreen clause and

provided for Association Leave Hours which were defined as a reasonable amount of union leave. The parties thereafter negotiated a subsequent agreement which provided roughly the same in this regard ("2007-2011 Agreement").

The parties thereafter negotiated a memorandum of understanding ("MOU") in 2009 to adjust certain benefits in the 2007-2011 Agreement due, in part, to the recession. However, the City notified all of its bargaining units, on or about November 20, 2009, that it was still experiencing revenue problems. In or about November 2010, the parties executed another MOU which extended the 2007-2011 Agreement to 2013 as well as containing agreements on several areas that significantly reduced the labor costs for the LVPOA. The parties also changed "a reasonable amount of time" to conduct union business to authorizing 1,800 hours of administrative leave for the period commencing June 29, 2011, to June 23, 2012, as a pilot program.

The parties subsequently negotiated a July 1, 2013 through June 30, 2015, agreement (2013-2015 Agreement), which also contained an evergreen clause. This Agreement included that same 1,800 hour cap language. The parties indicated that they were negotiating a subsequent agreement when SB 241 was passed. LVPOA sent a proposal dated June 17, 2015, that indicated that during negotiations for the new CBA (which would be effective from 2015 to 2017), the union made concessions, the value of which offset paid time – this proposal was allegedly not sent during an official bargaining session. The parties thereafter met twice for bargaining sessions after SB 241 passed (on June 24, 2015 and June 30, 2015). On or about June 24, 2014, the City rejected LVPOA's June 17, 2015, proposal and impasse was declared after the second negotiation. The matter was referred to arbitration per NRS 288.

The parties conducted a mediation on July 6, 2015, (a proposal was sent which had an Interim Agreement). The City also offered to take the matter to arbitration (though LVPOA notes that at an arbitration, the arbitrator simply could decide between two proposals, and not make a decision on SB 241). Thereafter, the parties finalized a CBA which was sent for approval on August 5, 2015. On or about July 15, 2015, the parties agreed on an Interim Agreement. The Interim Agreement stated that the LVPOA agreed to reimburse the City for all hours used to conduct union business, and such reimbursement shall be at the agreed upon hourly rate of $65/hour. Further, said agreement shall become effective upon ratification of the CBA by the parties and shall continue until an agreement is an

executed by all parties or until such time there is a legal adjudication of this matter, including, but not limited to, an arbitration decision or a decision rendered by this Board.

On December 23, 2015, LVPOA filed with this Board a Petition for Declaratory Order seeking a finding that the union had previously negotiated 1,800 Association Leave Hours and that it was entitled to reimbursement of any money it paid to the City pursuant to the Interim Agreement. On March 29, 2015, the subject Amended Petition for Declaratory Order (Re-Characterized as a Complaint) was filed as factual issues were presented necessitating a hearing, pursuant to NAC 288.410.

On November 24, 2014, this Board issued its order in the matter of *Serv. Employees of Int'l Union, Local 1107 v. Clark County*, Case No. 2015-011, Item No. 810 (2015). Said order was subsequently appealed to the district court as a petition for judicial review. On June 22, 2016, the Eighth Judicial District issued its decision and reversed Item 810, in part, while upholding other portions of that decision. *See generally Clark County v. Nevada Local Gov't Employee-Mgmt. Relations Bd.*, Case No. A-15-728412-J (2016). Thereafter, the Board issued its decision in a new matter, *Police Officers Ass'n of the Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No. 2015-031, Item No. 816 (2016) in which it adopted and found persuasive certain portions the district court order that reversed Item No. 810. These orders are incorporated herein by reference.

DISCUSSION

As indicated, LVPOA claims the City has acted in bad faith in violation of its duty to bargain in good faith per NRS 288.270(1). That statute states that it is a prohibited practice for a local government employer willfully to refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150. NRS 288.270(1)(e). "A party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by drawing inferences from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (1991), *quoting NLRB v. Ins. Agent's Int'l Union*, 361 U.S. 488 (1970).

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. *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-046113, Item No. 809, 4 (2015). Paid or nonpaid leaves of

absences are mandatory subjects of bargaining. NRS 288.150(2)(e). 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. *Id.* Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980). "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Boland v. Nevada Serv. Employees Union*, Item No. 802, at 5 (2015), *quoting Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America v. Lockridge*, 403 U.S. 274, 301 (1971).

Jurisdictional Challenge

Preliminarily, the Board discusses an apparent jurisdictional challenge advanced by the City. In its Opening Brief, the City states that it "strongly disagrees with the assertion that the POA prefunded 1800 hours of leave by virtue of the MOU of 2011. However, the initial question to be answered is whether as currently configured the Board has the authority or jurisdiction to even consider the argument being advanced. The City contends it does not." Opening, at 4-5. The City noted that "[t]here is no doubt this board was created by the Nevada State Legislature to apply expertise to labor disputes and assist in resolving them before they reach the courts." *Id.* at 5. The City then argues that "[h]owever, it is equally clear that certain types of disputes, namely the ultimate resolution of disputes concerning issues which were subject to negotiations but were not agreement to, were **required** by the legislature to be decided by an arbitrator, **not** this Honorable Board" *Id.* (**emphasis** in original). The City then concludes that "[a]s a result, the CITY urges this Board to decline the invitation to resolve the conflict between the two competing proposals." *Id.* at 6. The City seems to attempt to clarify its position by stating that "it certainly did not represent a stipulation to allow this Board to sit in the place of an arbitrator and decide between the two proposals." *Id.* at 7. As such, it appears that the City does not argue that the Board does not have the authority to hear this entire matter, as it concedes that the Board of course has jurisdiction over unfair labor practices (Opening, at 7, stating "it is clear that the Board does have jurisdiction to hear cases alleging bad faith bargaining under NRS 288.270(1)(e)").

The Board may hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any local government employer, local government

employee or employee organization. NRS 288.110. Our Supreme Court "has recognized that the EMRB has exclusive jurisdiction over unfair labor practice issues." *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002). "The EMRB has the duty to administer NRS Chapter 288, and thus, is "impliedly clothed with [the] power to construe it as a necessary precedent to administrative action." *Id.* Further, "[t]he Act grants the EMRB broad authority to 'hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of this chapter by any ... employee organization.'" *Rosequist v. Int'l Ass'n of Firefighters Local 1908*, 118 Nev. 444, 448, 49 P.3d 651, 653 (2002) *overruled on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007). "We have consistently held that '[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it ....'" *Clark Co. Sch. Dist. v. Local Gov't*, 90 Nev. 442, 446, 530 P.2d 114 (1974).

As such, while the City concedes the Board's clear and established authority to hear the unfair labor practice issue of bad faith bargaining at issue, the City seems to advance the argument above out of an abundance of caution. As this Board has held, "its authority is limited to matters arising out of the interpretation of, or performance under, the provisions of the Employee-Management Relations Act. NRS 288.110(2)." *Bonner v. City of North Las Vegas*, Case No. 2015-027 (2017). To the extent the parties seek the Board to "decide between the two proposals", that is expressly beyond this Board's jurisdiction. *Id.*, *citing City of Reno v. Reno Police Protective Ass'n*, 98 Nev. 472, 474–75, 653 P.2d 156, 158 (1982); *UMC Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 89-90, 178 P.3d 709, 713 (2008); *Int'l Ass'n of Fire Fighters, Local 1908 v. County of Clark*, Case No. A1-046120, Item No. 811 (2015); *Simo v. City of Henderson*, Case No. A1-04611, Item No. 796 (2014); *see e.g., Flores v. Clark Cty.*, Case No. A1-045990, Item No. 737 (2010).

Bad Faith Bargaining

The City argues that the POA did not pre-fund the 1,800 hours by virtue of the MOU executed in 2010. LVPOA argues that "[t]here is no requirement that administrative leave that has already been paid for in negotiations before the effective date of SB 241 must be renegotiated each and every time there is a reference to administrative leave in a" CBA. Opening, at 10. Indeed, LVPOA argues that "[t]his dispute involved the City's 'position' and interpretation of SB 241 that SB 241 requires full

funding of the Association leave hours each time a collective bargaining agreement is negotiated...". Reply, at 3; Reply at 8-9. While it appears that this is not actually an argument that the City advanced, the Board notes that it is obvious that regardless of the passage of SB 241, the parties could, of course, have previously voluntarily bargained for leave time in exchange for other concessions in prior contracts. SB 241 simply mandates the parties do so after its passage. This is point is quite clear as illustrated in the District Court's analysis as noted by the LVPOA. LVPOA's Reply, at 13. In any event, it appears the City argues simply that the concessions previously made were not given to offset union leave time.

SB 241 went into effect upon passage on June 1, 2015. Under SB 241, a collective bargaining agreement expires "at the end of the term stated in the agreement, notwithstanding any provisions of the agreement that it remain in effect, in whole or in part, after the end of that term, until a successor agreement become effective." SB 241, Sec. 1.3(1)(b).

SB 241 was codified, in part, in NRS 288.255. NRS 288.255 provides:

> A local government employer may agree to provide leave to any of its employees for time spent by the employee in performing duties or providing services for an employee organization if the full cost of such leave is paid or reimbursed by the employee organization or is offset by the value of concessions made by the employee organization in the negotiation of an agreement with the local government employer pursuant to this chapter.

As indicated, the Board found persuasive, in part, the June 22, 2016 Eighth Judicial District Court Decision and Order in the case of *Clark County v. Nevada Local Government Employee-Management Relations Board and Service Employees International Union, Local 17*, case number A-15-728412-J. *Police Officers Ass'n of the Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No. 2015-031, Item No. 816 (2016). However, Item No. 816 dealt with a unilateral change as well as step increases while the current matter involves bad faith bargaining and union leave time. The June 22, 2016 Eighth Judicial District Court Decision and Order is further instructive in this instant case.

In Item No. 810, the 2012 agreement expired on June 30, 2015. However, generally an employer must maintain the status quo period following expiration of a CBA and negotiation of a successor agreement. *Clark County v. Nevada Local Government Employee-Management Relations Board and Service Employees International Union, Local 17*, case number A-15-728412-J, at 10-11,

citing Stationary Eng'rs, Local 39 v. Airport Auto. of Washoe Cnty., Case No. A1-045349, Item No. 133 (1982). This general duty, however, must yield to the City's obligation to comply with the provisions of SB 241 as codified in NRS 288.255. *Id.*

The District Court found that "the EMRB fail[ed] to adequately address the difference between the consideration bargained for by the parties in 2012 and the required consideration under the 2015 amendment to the law." The District Court explained that "both EMRB and SEIU discuss evidence presented at the EMRB hearing regarding SEIU and Clark County's prior negotiations for concessions fully offsetting the cost of paid leave. Unfortunately, EMRB does not reply on this specific evidence in its decision. EMRB relied on an overly broad presumption." *Id.* at 12. As such, the District Court reversed the "EMRB's decision on this issue and remand[ed] this portion of the case to the EMRB for further fact-finding and a determination of what amount of union leave was bargaining for under the 2012 agreement. This amount shall determine to what extent, if any, the County was able to preserve the status quo while also complying with SB 241."

The Board heard evidence in this matter as to what concessions were made, if any, in exchange for union leave time. Specifically, the Board heard testimony of Tracey Valenzuela and Scott Edwards. Importantly, Valenzuela, who was involved in negotiations, testified that she did not have any recollection of any discussion relative to the amount of money **specifically** being targeted to change the terms from a reasonable amount of union hours to 1,800. Edwards provided similar testimony stating that there were no discussions at any time during the negotiations as to what specific amount was payable for that specific adjustment. While Edwards testified that he believes it was generally discussed and it was all part of the process, no testimony was presented showing what specific and actual concessions were made in exchange for union leave time as required by NRS 288.255. Indeed, Edwards simply testified when asked if he believed the concessions funded, at least in part, the leave hours, that "I do. I think that was all part of the process, the time off that we were going to spend would be included in the concessions." Moreover, Valenzuela testified that there "was not a limit on the number of hours that would be approved" under the "reasonable amount of time" words that previously existed in the parties prior CBA. Valenzuela clarified that under the MOU with the 1,800 hours cap "[t]here was a limit" that could have been approved but under the old language there was no limit to the

number of hours that could have been approved. The Board does not find Edwards' testimony credible that they generally exchanged certain concessions for leave time when he also testified that he could not recall any specific or actual concessions. Indeed, the Board does not find compelling that LVPOA would make significant concessions in exchange for a cap when none previously existed. Complainant failed to present any evidence of actual and specific concessions made in exchange for union leave time.

NRS 288.255 is plain, unambiguous, and unmistakable in its requirement that an employer may agree to provide leave for time spent for an employee organization if "the full cost of such leave is … offset by the value of concessions made by the employee organization". The Board finds that the Complainant failed to present sufficient evidence that any concessions it made was in exchange for union leave time. The Board notes that the above analysis is relevant and necessary in determining the issue presented: whether the City failed to bargain in good faith.[1]

As indicated, adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980). "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Boland v*, Item No. 802, at 5, *quoting Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America*, 403 U.S. at 301. Based on the conduct of the parties as a whole, LVPOA's argument that by refusing to recognize concessions sufficiently funded the 1,800 paid leave hours the City acted in bad faith, is not well taken. In the same vein, the City's actions of continuing to require LVPOA to pay for leave hours does not amount to failure to bargain in good faith. The parties met multiple times, proceeded to mediation, and the parties finalized a CBA. The City also at least made an offer to proceed to arbitration (even though LVPOA contends that could not have resolved the issue due to the role of an arbitrator). Simply because the City took the hard position that the LVPOA did not make previous concessions in exchange for union leave time, does not equate to a failure to bargain in good faith based on the conduct of the parties as a whole and the evidence presented. Indeed, Complainant failed to present sufficient evidence of fraud, deceitful action or other dishonest conduct by the City.

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[1] However, the Board also notes that decisions in Item Nos. 810 (including the appeal related thereto) and 816 are distinguishable as those matters dealt with unilateral changes and not bad faith bargaining *per se*.

Finally, based on the facts in this case and the issues presented, the Board declines to award cost and fees in this matter.

FINDINGS OF FACT

1. In 2002, LVPOA negotiated its first CBA with an effective end date in 2007.

2. This agreement provided for Association Leave Hours which was defined as a reasonable amount of union leave.

3. The parties negotiated a subsequent agreement which provided roughly the same in this regard.

4. The parties negotiated an MOU in 2009 to adjust certain benefits in the 2007-2011 Agreement due, in part, to the recession.

5. The City notified all of its bargaining units, on or about November 20, 2009, that it was still experiencing revenue problems.

6. In or about November 2010, the parties executed another MOU which extended the 2007-2011 Agreement to 2013 as well as containing agreements on several areas that significantly reduced the labor costs for the LVPOA.

7. The parties also changed "a reasonable amount of time" to conduct union business to the authorizing 1,800 hours of administrative leave for the period commencing June 29, 2011, to June 23, 2012, as a pilot program.

8. The parties negotiated a July 1, 2013, through June 30, 2015, agreement which included that same 1,800 hour cap language.

9. LVPOA sent a proposal dated June 17, 2015, which indicated that during negotiations for the new CBA, the union made concessions, the value of which offset paid time.

10. The parties met twice for bargaining sessions on June 24, 2015, and June 30, 2015.

11. On or about June 24, 2014, the City rejected LVPOA's June 17, 2015, proposal and impasse was declared after the second negotiation.

12. The parties conducted a mediation on July 6, 2015, (a proposal was sent which had an Interim Agreement).

13. The City offered to take the matter to arbitration.

14. The parties finalized a CBA.

15. On or about July 15, 2015, the parties agreed on an Interim Agreement.

16. The Interim Agreement stated that the LVPOA agreed to reimburse the City for all hours used to conduct union business, and such reimbursement shall be at the agreed upon hourly rate of $65/hour.

17. Further, said agreement shall become effective upon ratification of the CBA by the parties and shall continue until an agreement is executed by all parties or until such time there is a legal adjudication of this matter, including, but not limited to, an arbitration decision or a decision rendered by this Board.

18. On November 24, 2014, this Board issued its order in the matter of *Serv. Employees of Int'l Union, Local 1107 v. Clark County*, Case No. 2015-011, Item No. 810 (2015).

19. On June 22, 2016, the Eighth Judicial District issued its decision and reversed Item 810, in part, while upholding other portions of that decision – *Clark County v. Nevada Local Gov't Employee-Mgmt. Relations Bd.*, Case No. A-15-728412-J (2016).

20. Thereafter, the Board issued its decision in a new matter, *Police Officers Ass'n of the Clark County Sch. Dist. v. Clark County Sch. Dist.*, Case No. 2015-031, Item No. 816 (2016) in which it adopted and found persuasive certain portions the district court order that reversed Item No. 810.

21. Valenzuela testified that there "was not a limit on the number of hours that would be approved" under the "reasonable amount of time" words that previously existed in the parties prior CBA.

22. Valenzuela, who was involved in negotiations, testified that she did not have any recollection of any discussion relative to the amount of money specifically being targeted to change the terms from a reasonable amount of union hours to 1,800.

23. Edwards provided similar testimony stating that there were no discussions at any time during the negotiations as to what specific amount was payable for that specific adjustment.

24. While Edwards testified that he believes it was generally discussed and it was all part of the process, no testimony was presented showing was specific and actual concessions were made in exchange for union leave time.

25. Valenzuela testified that under the MOU with the 1,800 hours cap "[t]here was a limit" that could have been approved but under the old language there was no limit to the number of hours that could have been approved.

26. Complainant failed to present any evidence of actual and specific concessions made in exchange for union leave time.

27. 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 on file herein pursuant to the provisions of NRS Chapter 288.

3. NRS 288.270(1)(e) states that it is a prohibited practice for a local government employer willfully to refuse to bargain collectively in good faith with the exclusive representative as required in NRS 288.150.

4. "A party's conduct at the bargaining table must evidence a sincere desire to come to an agreement. The determination of whether there has been such sincerity is made by drawing inferences from conduct of the parties as a whole." *City of Reno v. Int'l Ass'n of Firefighters, Local 731*, Item No. 253-A (1991), *quoting NLRB v. Ins. Agent's Int'l Union*, 361 U.S. 488 (1970).

5. The Act imposed a reciprocal duty on employers and bargaining agents to negotiate in good faith concerning the mandatory subjects of bargaining listed in NRS 288.150.

6. 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.

7. Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. *Reno Municipal Employees Ass'n v. City of Reno*, Item No. 93 (1980).

8. In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" *Boland v*, Item No. 802, at 5, *quoting Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. of America*, 403 U.S. at 301.

9. The Board has jurisdiction over unfair labor practices and to hear cases alleging bad faith bargaining under NRS 288.270(1)(e).

10. NRS 288.255 is plain, unambiguous, and unmistakable in its requirement that while employer may agree to provide leave for time spent for an employee organization, "the full cost of such leave is … offset by the value of concessions made by the employee organization".

11. The City's actions of refusing to recognize prior concessions sufficiently funded the 1,800 paid leave hours or continuing to require LVPOA to pay for leave hours does not amount to failure to bargain in good faith.

12. The Complaint in this matter is not well-taken.

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

ORDER

Based on the foregoing, it is hereby ordered that the Board finds in favor of Respondent City of Las Vegas as set forth above. Complainant shall take nothing by way of its Complaint.

DATED this 22 day of February, 2017.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By:_____
PHILIP LARSON, Chairman

By:_____
BRENT ECKERSLEY, ESQ., Vice-Chairman

By: _____
SANDRA MASTERS, Board Member