**STATE OF NEVADA**

**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

| | |
|---|---|
| INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 4068 and CHRISTOPHER VAN LEUVEN,<br><br>Complainants,<br><br>v.<br><br>TOWN OF PAHRUMP,<br><br>Respondent. | Case No. 2017-009<br><br>**NOTICE OF ENTRY OF ORDER** |

To: IAFF Local 4068 and Christopher Van Leuven and their attorneys Adam Levine, Esq. and the Law Office of Daniel Marks;

To: Town of Pahrump and their attorneys Bret F. Meich, Esq. and Downey Brand LLP.

PLEASE TAKE NOTICE that the **ORDER** was entered in the above-entitled matter on November ___, 2018.

A copy of said order is attached hereto.

DATED this 14 day of November 2018.

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 14 day of November 2018, I served a copy of the foregoing **NOTICE OF ENTRY** by mailing a copy thereof, postage prepaid to:

Law Office of Daniel Marks
Adam Levine, Esq.
610 South Ninth Street
Las Vegas, NV 89101

Downey Brand LLP
Bret F. Meich, Esq.
5421 Kietzke Lane, Suite 100
Reno, NV 89511

MARISU ROMUALDEZ ABELLAR
Executive Assistant

**STATE OF NEVADA**

**LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD**

| | |
|---|---|
| INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 4068, and CHRISTOPHER VAN LEUVEN,<br><br>Complainants,<br><br>v.<br><br>TOWN OF PAHRUMP,<br><br>Respondent. | Case No. 2017-009<br><br>**ORDER**<br><br>**PANEL A**<br><br>**ITEM NO. 833** |

On October 10, 2018, 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. At issue, was Respondent Town of Pahrump's (the "Town") Motion to Defer to Arbitration's Decision. On August 28, 2018, the Board ordered the parties to supplement the record with the transcript from the arbitration proceedings so the Board could fully consider the elements for deferral as set forth below.

Complainants filed a Complaint before this Board in April of 2017. In or about January 2012, Van Leuven was terminated by the Town after being involved in an incident involving a Town ambulance. Complainants alleged that the CBA between the parties provided that firefighters/ paramedics could only be discharged or disciplined for just cause. The union grieved the termination and advanced said grievance to arbitration. On July 9, 2012, arbitrator Sara Adler granted the grievance finding that Van Leuven was terminated without just cause and remanded the matter back to parties to determine the appropriate remedy (though the arbitrator found "serious misconduct"). The Town challenged the arbitrator's award in the Fifth Judicial District Court, and the District Court Judge vacated said award. The union appealed that Order, and the Nevada Supreme Court reversed the District Court in Case No. 64270 (June 11, 2015). Said orders are hereby incorporated by reference.

The parties thereafter met to agree upon the appropriate remedy per Arbitrator Adler's Order. The parties agreed that Van Leuven would receive a suspension without pay for six 24-hour shifts. Further, the parties calculated back pay less those shifts as well as other monies earned by Van Leuven in mitigation of damages. The parties entered in a Settlement Agreement in this regard on or about March 8, 2016.

Complainants state that in February of 2017, Van Leuven noticed discrepancies in his PERS contributions. The Town HR manager Shamrell informed Van Leuven that she would look into it for him. In April of 2017, Shamrell informed Van Leuven that the Town did not make PERS contributions from the date of his termination until the date of his reinstatement because a settlement was negotiated which did not include PERS as it was settlement and not back wages.

Complainants allege that PERS contributions become a mandatory subject of bargaining as they are significantly related to salary or wage rates or other forms of direct monetary compensation under NRS 288.150(2)(a). Complainants further allege that Article 11 of the parties' CBA provides that all employees shall participates in PERS and that "'[g]rievance and arbitration procedures for resolution of disputes relating to interpretations or application of collective bargaining agreements' are subject of mandatory bargaining pursuant to NRS 288.150(2)(o).'"

Complainants then allege that the Town committed the prohibited practice of failing to bargain in good faith:

> By negotiating a Settlement Agreement to liquidate the back wages owned to Van Leuven pursuant to the Arbitrator's Award with the secret intent of avoiding NVPERS contributions on behalf of Van Leuven in connection with those back wages, the Town of Pahrump failed to bargain in good faith in violation of NRS 288.270(1)(1) and (e).

Complaint, at 4.

On April 29, 2018, Arbitrator Goldberg issued his Opinion and Award which denied in its entirety Complainants' grievance against the Town. The grievance alleged that the Town violated the CBA by not making PERS contributions on settlement amounts. Arbitrator Goldberg did not find a "secret intent" but instead explained that the PERS contributions were raised by Complainants during negotiations, but that the resulting Settlement Agreement did not include PERS contributions under the mutually-agreed terms of the settlement. Arbitrator Goldberg also found that the parties agreed to

something less than full reinstatement of the status quo ante. Complainants demanded PERS contributions in early settlement negotiations, and the settlement agreement specifically waived all compensation or benefits that were not expressly stated in the agreement.

In this matter, Complainants also filed a "Supplement to Opposition to Motion to Defer" in addition to their original timely filed Opposition. Complainants argue that the "Arbitrator did not decide whether or not such contributions need to be made pursuant to NRS Chapter 286 or whether NRS 288.270(1)(a) or (e) were violated or bad faith bargaining." Complainants further indicated that on August 22, 2018, PERS issued a determination that the Town was obligated to make those contributions (the Board does not have jurisdiction to make this determination under NRS Chapter 286, as PERS may have[1]). As of April 21, 2016, PERS determined that "the information provided regarding the back pay award does not appear to be subject to retirement contribution." However, the August 22, 2018, attached letter indicated that Complainants requested this determination, and "[b]ased on the information submitted, we have determined that the terms of the Settlement Agreement and General Release of Claims dated March 8, 2018[] qualifies as a retroactive reinstatement under NRS 286. Therefore, the Town of Pahrump must report the retroactive earnings and contributions due."

## DISCUSSION

The arbitrator had jurisdiction to determine if just cause existed but not to determine whether the Town engaged in an unfair labor practice. The Board 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). "[I]t is proper to look toward the NLRB for guidance on issues involving the EMRB." *Id.*

---

[1] The Board notes that it does not have jurisdiction to decide whether or not PERS contribution were required by law to be made pursuant to NRS Chapter 286 (indeed, PERS eventually decided this issue, at least in part). This is expressly beyond the Board's jurisdiction, which is well established. *See* NRS 288.110(2); *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); *City of Henderson v. Kilgore*, 122 Nev. 331, 333, 131 P.3d 11, 12 (2006); *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); *Bonner v. City of N. Las Vegas*, Case No. 2015-027 (2017); *Kerns v. LVMPD*, Case No. 2017-010 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018); *Serv. Employees Int'l Union, Local 1107 v. So. Nevada Health Dist.*, Case No. 2017-011, Item No. 828 (2018).

"The [EMRB] defers to a prior arbitration if: (1) the arbitration proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the [EMRA]; (4) the contractual issue was factually parallel to the unfair labor practice issue; and (5) the arbitrator was presented generally with the facts relevant to resolving the [unfair labor practice]." *Id.* "The party desiring the [EMRB] to reject an arbitration award has the burden of demonstrating that these principles are not met." *Id*; *see also Washoe Sch. Principals Ass'n v. Washoe Cty. Sch. Dist.*, Case No. A1-046098 (2017); *Reichold Chemicals*, 275 NLRB 1414, 1415 (1985); *Good Samaritan Hosp. & California Nurses Ass'n*, 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015).

The Board has repeatedly emphasized that the preferred method for resolving disputes is through the bargained-for processes, and the Board applies NAC 288.375(2) liberally to effectuate that purpose. *Id.*; *see also* NAC 288.040; *see also, e.g., Ed. Support Employees Ass'n v. Clark Cty. School Dist.*, Case No. A1-045509, Item No. 288 (1992); *Nevada Serv. Employees Union v. Clark Cty.*, Case No. A1-045759, Item No. 540 (2003); *Carpenter vs. Vassiliadis*, Case No. A1-045773, Item No. 562E (2005); *Las Vegas Police Protective Ass'n Metro, Inc. v. Las Vegas Metropolitan Police Dep't*, Case No. A1-045783, Item No. 578 (2004); *Saavedra v. City of Las Vegas*, Case No. A1-045911, Item No. 664 (2007); *Las Vegas City Employees' Ass'n v. City of Las Vegas*, Case No. A1-045940, Item No. 691 (2008); *Jessie Gray Jr. v. Clark County School Dist.*, Case No. A1-046015, Item No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018).

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). NRS 288.270(1)(e) deems it a prohibited labor practice for a local government employer to bargain in bad faith with a recognized employee organization and a unilateral change to the bargained for terms of employment is regarded as a per se violation of this statute. A unilateral change also violates NRS 288.270(1)(a). *O'Leary v. Las Vegas Metropolitan Police Dep't*, Item No. 803, EMRB Case No. A1-046116 (2015). Under the unilateral change theory, an employer commits a prohibited labor practice when its changes the terms and conditions of employment without first bargaining in good faith with the recognized bargaining agent. *Boykin v. City of N. Las Vegas Police Dep't*, Case No. A1-045921, Item No. 674E (2010); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 59

P.3d 1212 (2002).

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). The Nevada Supreme Court has affirmed that subjects not specifically enumerated in NRS 288.150 as a nonnegotiable subject is nevertheless a mandatory subject of bargaining if it bears a "significant relationship" to wages, hours, and working conditions. *Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367, 371, 849 P.2d 343, 346 (1993) (a decision to lay off employees had a direct and cognizable effect on wages); s*ee also Grunwald v. Las Vegas Metropolitan Police Dep't*, Case No. 2017-006 (2017) (holding that based on the specific facts of this case, removal from the promotional list was not a form of discipline, but rather a collateral effect with the Department following policy and guidelines, and as such was not significantly related to a subject of mandatory bargaining).

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.* "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). 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).

The parties do not dispute the first two elements of deferral ((1) the arbitration proceedings were fair and regular and (2) the parties agreed to be bound) and as such they are not at issue.[2] The Board notes that nothing in the record shows these two elements are not satisfied. As such, the following

[2] Should Complainants feel this is in error, the Board invites Complainants to file a petition for rehearing as provided in NAC 288.364.

elements are at issue: "(3) the decision was not clearly repugnant to the purposes and policies of the [EMRA]; (4) the contractual issue was factually parallel to the unfair labor practice issue; and (5) the arbitrator was presented generally with the facts relevant to resolving the [unfair labor practice]." *Id.*[3]

The Board finds that Complainants have failed to meet their burden of demonstrating that these principles were not met.

The same facts and circumstances were addressed in the parties' binding dispute resolution hearing, and the arbitrator found that the Complainants and the Town agreed to damages "less than full restitution" and that, while the Union initially demanded PERS, the Union did not later raise this issue with the Town during months of subsequent negotiations. In the end, the arbitrator found that the settlement was freely negotiated by the parties, and the settlement terms do not specifically include PERS contributions. PERS contributions were an express topic of negotiations, seperate and distinct from back wages, with respect to settling the various claims of the parties.

Moreover, the Board notes, as indicated above, "[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." Adamant insistence on a bargaining position or "hard bargaining" is not enough to show bad faith bargaining. "In order to show 'bad faith', a complainant must present 'substantial evidence of fraud, deceitful action or dishonest conduct.'" Here, Complainants had to submit additional information to PERS and did not receive a determination until the August 22, 2018 PERS letter indicating that the Settlement qualified "as retroactive reinstatement *under NRS 286*." (*emphasis* added). This is well after the Settlement was reached (interestingly, PERS made a different determination on or about April 21, 2016).

After in-person negotiations and extensive written exchanges of settlement terms, the parties executed the Settlement Agreement. The Settlement Agreement itself specifically sought to resolve any and all remaining disputes including "any and all damages or other types of compensation or benefits owed to Employee by Employer through Employee's return to work." Complainants agreed to "refrain

---

[3] The Board notes that Complainants, in their Opposition, appear to only argue that the third element was not met (*i.e.* repugnancy) and thus failed to meet their burden by not presenting arguments on elements 4 and 5. *See Opposition*, at 7. Nonetheless, the Board addresses elements 4 and 5 herein to determine if deferral is indeed warranted in this matter. *See also supra* n. 2.

from filing any action, grievance, or proceeding against Employer .... including, but not limited to discipline to be imposed upon the Employee, the parties' conduct during litigation, the actions of Town staff following the incident, and any and all damages owed to Employee by Employer." Indeed, Complainants agreed that if any "board ... assumes jurisdiction of any action against the Released Parties arising out of the termination ... or any other acts occurring prior to the date of Employee's execution of this Agreement, Employee will direct that ... board ... to withdraw or dismiss the matter, with prejudice ...." The Compromise and Settlement language was very broad as well as the waivers entered into by the parties. Moreover, the Agreement expressly noted that the parties had the opportunity to receive legal advice, and the parties were represented by counsel.

While PERS was an initial topic of negotiation, ultimately the Town did not agree to pay into PERS as part of the final, binding settlement between the parties. In the Arbitration Award, as well as the transcript supplemented, it is evident that the Arbitrator considered and made numerous and detailed factual findings, and was presented **generally with the facts relevant to resolving the unfair labor practice**. These include the negotiations regarding the appropriate remedy including the union's requests in addition to reinstatement. Indeed, the parties presented in detail the facts and circumstances surrounding the parties' negotiations relevant to the bad faith bargaining and unilateral change charges, and the Arbitrator analyzed the parties' intent in entering into it. The Arbitrator found that the parties agreed that the Settlement would involve something less than a complete restoration to the status quo ante with an adjustment made for a disciplinary suspension. The Arbitrator found that "[t]he fact that the Union may have intended to include PERS payments within the meaning of 'wages' as used in the settlement was never expressed in any document other than [the Union's counsel's] August 2015 email which preceded months of extensive negotiations, during which it is undisputed that the subject was simply not discussed." The Arbitrator noted that "the arbitrator in the underlying discipline case gave the parties free reign to determine an 'appropriate remedy' .... She left the remedy up to the parties. And this is what the parties concluded." *See Good Samaritan Hosp. & California Nurses Ass'n*, 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015).

As the Arbitrator's decision found, the Union initially requested that "[a]ll PERS and retirement benefits [be] fully restored." But after "months of extensive negotiations, during which it is undisputed

that [PERS] was simply not discussed" ... "the evidence established that the parties agreed that the Settlement would involve something less than a complete restoration to the status quo ante with an adjustment made for a disciplinary suspension." The Arbitrator found that the parties "concluded a Settlement Agreement which contains language which is all inclusive and leaves no room for ambiguity." The Arbitrator further found that "[a]s is obvious, the parties did not include PERS payments, or any other elements, as components of the lump sum payment in the Settlement designated as damages..." The Arbitrator closely examined the parties' bargaining including months of settlement negotiations – the very facts at issue underlying the bad faith bargaining charges. *See, e.g., Dennison Nat. Co.*, 296 NLRB 169, 170 (1989) (noting that "[t]he Board would necessarily consider the same facts in reaching a decision on the Union's unilateral change allegation. Accordingly, we find that the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice.").

Complainants seem to only conclusory argue that "(1) at [sic] faith bargaining is repugnant to Chapter 288 and (2) the only issue decided by the arbitrator was a contractual one". As indicated, that is not the standard for deferral. It is whether "the decision was not clearly repugnant to the purposes and policies of the [EMRA]." Complainants have not cited any evidence from the record to show that the arbitrator's decision is clearly repugnant to the purposes and polices of the Act. *See contra City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 896, 59 P.3d 1212, 1218 (2002) (finding that "the EMRB has exclusive jurisdiction over alleged prohibited practices concerning mandatory bargaining issues. The arbitrator found that the City may unilaterally adopt rules and enforce them with disciplinary action, as long as the rules are reasonable and not in conflict with the law. Yet, under the EMRA, disciplinary procedure is a mandatory subject of negotiation."). Instead, Complainants argue that because they pled bad faith bargaining and unilateral changes related thereto, an unfair labor practice, no arbitrator finding, no matter how relevant and factually overlapping, is enough to satisfy *City of Reno*'s deference standard. Complainants' logical end would nullify the deferral doctrine. No evidence has been submitted that the Town engaged in a prohibited practice; instead, the record establishes that the parties freely negotiated the Settlement Agreement, PERS was a topic of the negotiations, and the final settlement did not include PERS. *See also Badger Meter, Inc.*, 272 NLRB 824, 826 (1984) ("[t]he arbitrator was faced with the contractual question of whether the Respondent's transfers and

subcontracting violated its collective-bargaining agreement. The Board is faced with the statutory question of whether the Respondent's actions constituted unilateral changes that violated its bargaining obligation under Section 8(a)(5). The contractual and statutory issues turn on the presence or absence of contractual authorization for the Respondent's changes. Evidence of the parties' collective-bargaining agreements, bargaining history, and past practice are parallel facts that should resolve both issues. Accordingly, we find that the contractual and statutory issues are factually parallel... It is not necessary that the case have been presented the way the General Counsel might have presented it with the benefit of hindsight. The Board's involvement is not in the nature of an appeal by trial de novo.").

In *Reichold Chemicals*, 275 NLRB 1414, 1415 (1985), the unfair labor practice asserted was unilaterally changing the bargaining unit's composition without bargaining in good faith with the union. The NLRB applied the deferral doctrine and noted that "[u]nless the award is 'palpably wrong,' i.e., unless the arbitrator's decision is not susceptible to an interpretation consistent with the Act, we will defer." *Id.* Following a remand, the administrative law judge stated that the grievance alleged the Respondent breached the contract, while the unfair labor practice charges alleged the Respondent's failure to bargain, and "[t]herefore, he concluded the unfair labor practice issue was not factually parallel to the contract issue." *Id.* The NLRB overturned and found the arbitration award met the standards for deferral. *Id.* The Board explained:

> Initially, we differ with the judge's finding that the contractual and unfair labor practice issues are not factually parallel. The judge correctly found that the arbitration issue is one of contractual interpretation while the unfair labor practice issue is whether the Respondent failed to bargain in good faith about a mandatory subject of bargaining. These issues, however, both turn on whether the contract permitted the chief operators' promotions, and therefore they should be resolved by the same facts, i.e., the parties' collective-bargaining agreements, relevant bargaining history, and past practice. Thus, the issues are factually parallel. *See Badger Meter, Inc.*, 272 NLRB 824 (1984). The record, including the arbitrator's decision, shows that the parties presented such evidence to the arbitrator, and neither the judge nor the General Counsel cites any additional evidence needed to resolve the statutory issue. We also find, therefore, that the parties generally presented Arbitrator Glendon with the facts relevant to the statutory issue.

*Reichold Chemicals*, 275 NLRB 1414, 1415–16 (1985). The NLRB further concluded, in regards to repugnancy, that:

///

> The arbitrator found that the contract's management-rights clause gave the Respondent authority generally to direct its work force, and that neither the recognition clause nor any other provision restricted this right. Similar to the arbitrator, the Board, if presented with this case de novo, would have determined whether the contract authorized the Respondent unilaterally to promote the chief operators from the bargaining unit to shift supervisor positions. If the Board found that the contract permitted this action, the Board would then have found that the Respondent did not violate its statutory bargaining obligation. Whether or not the arbitrator's analysis fully comports with Board case law, we stated in *Olin* that 'we would not require an arbitrator's award to be totally consistent with Board precedent,' if the award is susceptible to an interpretation consistent with the Act.

*Id*; *see also Dennison Nat. Co.*, 296 NLRB 169, 170 (1989) ("Similar to the arbitrator, the Board, if presented with this case de novo, would have determined whether the contract authorized the Respondent unilaterally to eliminate the Receiver (Special Orders) job classification. If the Board found that the contract permitted this action, the Board would then have found that the Respondent did not violate its statutory bargaining obligation."); *see also Good Samaritan Hosp. & California Nurses Ass'n*, 31-CA-117462, 2015 WL 7223437 (Nov. 16, 2015).[4]

The contractual issue (whether the Town violated the CBA by not making contributions to PERS) was **factually** parallel to the unfair labor practices issued alleged. The arbitrator was presented **generally with the facts relevant to resolving the unfair labor practice**, whether the Town failed to bargain in good faith regarding a mandatory subject of bargaining (the Board notes, that for the purposes of this Order, it assumed that the subjects listed in Complainants' Complaint were significantly related to a mandatory subject of bargaining, per Complainants' request). As such, the Board does not find that the decision was "clearly repugnant" to the purposes of the EMRA.

## FINDINGS OF FACT

1. The arbitration proceedings were fair and regular.

2. The parties agreed to be bound.

[4] The Board notes that while it does not have the jurisdiction to find a breach of contract violation, it is well-established that the Board may construe the parties' CBA and resolve ambiguities as necessary to determine whether or not a prohibited practice has been committed. *Boykin v. City of N. Las Vegas Police Dept.*, Item No. 674E, Case No. A1-045921 (2010), *citing NLRB v. Strong Roofing & Ins. Co.*, 393 U.S. 357 (1969), *NLRB v. C&C Plywood Corp.*, 385 U.S. 421 (1967), *Jim Walter Resources*, 289 NLRB 1441, 1449 (1988); *Kerns v. LVMPD*, Case No. 2017-010 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018); *Yu v. LVMPD*, Case No. 2017-025, Item No. 829 (2018); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018).

3. The decision was not clearly repugnant to the purposes and policies of the EMRA.

4. The contractual issue was factually parallel to the unfair labor practice issue.

5. The arbitrators were presented generally with the facts relevant to resolving the unfair labor practices alleged.

6. The same facts and circumstances were addressed in the parties' binding dispute resolution hearing.

7. Complainants had to submit additional information to PERS and did not receive a determination until well after the Settlement was reached.

8. After in-person negotiations and extensive written exchanges of settlement terms, the parties executed the Settlement Agreement.

9. The Arbitrator closely examined the parties' bargaining including months of settlement negotiations – the very facts at issue underlying the bad faith bargaining charges.

10. The parties freely negotiated the Settlement Agreement, PERS was a topic of the negotiations, and the final settlement did not include PERS.

11. 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. The preferred method for resolving disputes is through the bargained-for processes, and the Board applies NAC 288.375(2) liberally to effectuate that purpose.

4. The EMRB defers to a prior arbitration if: (1) the arbitration proceedings were fair and regular; (2) the parties agreed to be bound; (3) the decision was not clearly repugnant to the purposes and policies of the EMRA; (4) the contractual issue was factually parallel to the unfair labor practice issue(s); and (5) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice(s).

5. The party desiring the Board to reject an arbitration award has the burden of demonstrating that these principles are not met.

6. Complainants have failed to meet their burden.

7. 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 Town's Motion to Defer to the Arbitration Award is GRANTED. The Complaint is hereby DISMISSED WITH PREJUDICE.

DATED this 14 day of November, 2018.

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD

By: _____
BRENT ECKERSLEY, ESQ., Chair

By: _____
SANDRA MASTERS, Vice-Chair

By: _____
PHILIP LARSON, Board Member