

MARISU ROMUALDEZ ABELLAR
Executive Assistant

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am an employee of the Local Government Employee-Management
3 Relations Board, and that on the 12th day of June 2019, I served a copy of the foregoing NOTICE OF
4 ENTRY OF ORDER by mailing a copy thereof, postage prepaid to:

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FILED

JUN 12 2019

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

WATER EMPLOYEES ASSOCIATION OF
NEVADA,

Complainant,

v.

LAS VEGAS VALLEY WATER DISTRICT,

Respondent.

Case No. 2019-002

PANEL A

**ORDER ON RESPONDENT'S MOTION
TO DISMISS AND FOR DEFERRAL;
COMPLAINANT'S MOTION TO
DISMISS COUNTERCLAIM; AND
COMPLAINANT'S SPECIAL MOTION
TO DISMISS COUNTERCLAIM**

ITEM NO. 841

On May 29, 2019, 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 were Respondent's Motion to Dismiss and for Deferral, Complainant's Motion to Dismiss Respondent's Counterclaim, and Complainant's Special Motion to Dismiss Respondent's Counterclaim.

Respondent requests the Board to dismiss this matter. Complainant filed a grievance with Respondent which purportedly deals with contractual issues. Respondent generally agrees that a grievance has been filed (though disputes the merits that it did not violate the CBA) but argues that is why dismissal and deferral of this matter is necessary.¹

The Board's 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). The Board has

¹ In their Reply, Respondent stated that while Complainant objected to Respondent's request for a more particular statement, this matter is now moot. As such, the Board does not address this issue.

1 exclusive jurisdiction over unfair labor practice issues arising under NRS Chapter 288. *City of Reno v.*
2 *Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002).

3 The Board generally may defer to arbitration proceedings. *Id.* In such cases, it is the practice of
4 the Board to stay pending matters during the arbitration process. *See, e.g., Clark County Education*
5 *Ass'n v. Clark County Sch. Dist.*, EMRB Case No. A1-046025, Item No. 764 (2011); *see also*
6 *Rosenberg v. The City of N. Las Vegas*, EMRB Case No. A1-045951, Item No. 707 (2009); *Thomas v.*
7 *City of N. Las Vegas*, EMRB Case No. A1-045618, Item No. 407 (1997), *City of Las Vegas v. LVPOA*,
8 Case No. 2017-012 (2017).

9 In the same vein, the Board has repeatedly emphasized that the preferred method for resolving
10 disputes is through the bargained-for processes, and the Board applies NAC 288.375(2) liberally to
11 effectuate that purpose. *See also* NAC 288.040; *see also, e.g., Ed. Support Employees Ass'n v. Clark*
12 *Cty. School Dist.*, Case No. A1-045509, Item No. 288 (1992); *Nevada Serv. Employees Union v. Clark*
13 *Cty.*, Case No. A1-045759, Item No. 540 (2003); *Carpenter vs. Vassiliadis*, Case No. A1-045773, Item
14 No. 562E (2005); *Las Vegas Police Protective Ass'n Metro, Inc. v. Las Vegas Metropolitan Police*
15 *Dep't*, Case No. A1-045783, Item No. 578 (2004); *Saavedra v. City of Las Vegas*, Case No. A1-
16 045911, Item No. 664 (2007); *Las Vegas City Employees' Ass'n v. City of Las Vegas*, Case No. A1-
17 045940, Item No. 691 (2008); *Jessie Gray Jr. v. Clark County School Dist.*, Case No. A1-046015, Item
18 No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case
19 No. 2018-017 (2018).

20 As such, the Board will stay this matter pending the resolution of the parties' bargained for
21 processes.

22 Next, Complainant argues that the Counterclaim must be dismissed because there is no probable
23 cause for it. Respondent contends that while it never sought to reopen negotiations over the terms in the
24 CBA regarding the application of benefits, it agreed to work with Complainant to clarify the MOU.
25 Respondent alleges that Complainant unilaterally repudiated and abandoned the bargained for
26 procedures and that is the reason it filed its Counterclaim.

27 NAC 288.375 provides that the Board may dismiss a matter if the Board determines that no
28 probable cause exists for the complaint. Based on the pleadings, an evidentiary hearing is required in

1 order to determine the issues presented, including the proper submission and presentation of evidence as
2 well as credibility determinations in accordance with NRS and NAC 288.

3 Finally, Complainant contends that Respondent's Counterclaim is a SLAPP claim that must be
4 dismissed. In opposition, Respondent argues that Nevada's anti-SLAPP statutes do not apply to
5 administrative proceedings; the Board only has those powers expressly enumerated, and in any event
6 Respondent's Counterclaim does not constitute a SLAPP claim.

7 The Board agrees with Respondent that pursuant to the plain language of NRS 41.660, SLAPP
8 actions do not apply to this Board. *See also Coker v. Sassone*, 135 Nev. Adv. Op. 2, 432 P.3d 746, 747
9 (2019) ("specifically NRS 41.660, which authorizes a litigant to file a special motion to dismiss when
10 an action filed in court is 'based upon a good faith communication in furtherance of the right to petition
11 or the right to free speech in direct connection with an issue of public concern.'").

12 The Nevada Supreme Court has held that "the plain language of NRS 288.110(2) limits the
13 EMRB's power to grant such orders only 'after a hearing, if it finds that the complaint is well taken.'
14 This language compels the conclusion that the EMRB must hear and decide the complaint before any
15 basis will exist for injunctive relief." *City of Henderson v. Kilgore*, 122 Nev. 331, 335, 131 P.3d 11, 14
16 (2006). Our Supreme Court reasoned that "[n]owhere in the statute does it state that the EMRB has the
17 power to issue preliminary injunctions. Thus, we conclude that the plain language of NRS 288.110, and
18 NRS Chapter 288 in general, does not give the EMRB the power to issue preliminary injunctions." *Id.*
19 Given the forgoing, the Board agrees that the same rationale applies in the instant matter in relation to
20 Nevada's anti-SLAPP provisions.²

21 Regardless, the Board agrees that even if these provisions did apply, Respondent's Counterclaim
22 does not constitute a SLAPP claim. Respondent simply objected to Complainant bypassing the required
23 grievance and arbitration procedures in Article 5 of the CBA, as evidenced by the subject Complaint
24 with this Board. In the same vein as the Board denying Complainant's Motion to Dismiss Respondent's

25 ² Our Supreme Court reasoned: "It cannot be said that the EMRB's statutory powers to investigate and
26 determine the merits of a public employee's complaint are rendered meaningless without the authority to
27 issue preliminary injunctions. If the EMRB finds Kilgore's complaint to be 'well taken,' it can order his
28 reinstatement with back pay." *Id.* As Complainant even notes, the Board already has a provision to
dismiss a complaint as "spurious or frivolous" pursuant to NAC 288.375 (which the Board declines to
do so in the instant matter for the foregoing reasons).

1 Counterclaim, it cannot be said at this stage that Complainant did not violate NRS 288.270 in relation to
2 the parties' bargained for processes.

3 **ORDER**

4 IT IS, THEREFORE, ORDERED that the Motion to Dismiss the Complaint is DENIED.

5 IT IS FURTHER ORDERED that the matter is STAYED pending the resolution of the dispute
6 through the bargained for processes.

7 IT IS FURTHER ORDERED that the parties are required to submit a joint status report
8 regarding the progress of the aforementioned every 90 days beginning from the date of this Order. If the
9 parties cannot agree on a joint status report, each is required to file a separate status report.

10 IT IS FURTHER ORDERED that the Motion to Dismiss Respondent's Counterclaim is
11 DENIED.

12 IT IS FURTHER ORDERED that the Special Motion to Dismiss Respondent's Counterclaim is
13 DENIED.

14 Dated this ___ day of June, 2019.

15 LOCAL GOVERNMENT EMPLOYEE-
16 MANAGEMENT RELATIONS BOARD

17 BY: 
18 BRENT C. ECKERSLEY, Chair