

FILED

SEP 30 2019

STATE OF NEVADA

STATE OF NEVADA
E.M.R.B.

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TEAMSTERS LOCAL 14,

Petitioner,

v.

TOWN OF PAHRUMP and NYE COUNTY,

Respondents.

Case No. 2019-009

NOTICE OF ENTRY OF RDER

PANEL C

ITEM NO. 849

TO: Complainant Teamsters Local 14 and their attorneys, Adam Levine, Esq. and the Law Office of Daniel Marks;

TO: Respondent Town of Pahrump and Nye County and their attorneys, David B. Dornak, Esq. and Holly E. Walker, Esq., and Fisher & Phillips. LLP.

PLEASE TAKE NOTICE that the **ORDER ON PETITION FOR DECLARATORY ORDER** was entered in the above-entitled matter on September 30, 2019.

A copy of said order is attached hereto.

DATED this 1st day of October 2019.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


MARISU ROMUALDEZ ABELLAR
Executive Assistant

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2 **CERTIFICATE OF MAILING**

3 I hereby certify that I am an employee of the Government Employee-Management Relations
4 Board, and that on the 1st day of October 2019, I served a copy of the foregoing **NOTICE OF ENTRY**
5 **OF ORDER** by mailing a copy thereof, postage prepaid to:

6 Law Office of Daniel Marks
7 Daniel Marks, Esq.
8 Adam Levine, Esq.
9 610 South Ninth Street
10 Las Vegas, NV 89101

11 David Dornak, Esq.
12 Holly E. Walker, Esq.
13 Fisher & Phillips LLP
14 300 S. Fourth Street, Suite 1500
15 Las Vegas, NV 89101

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MARISU ROMUALDEZ ABELLAR
Executive Assistant

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GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

TEAMSTERS LOCAL 14,

Petitioner,

v.

TOWN OF PAHRUMP and NYE COUNTY,

Respondents.

Case No. 2019-009

**ORDER ON PETITION FOR
DECLARATORY ORDER**

PANEL C

ITEM NO. 849

On September 18, 2019, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Government-Management Relations Act (the "Act"); NAC Chapter 288 and NRS Chapter 233B.

At issue was Petitioner's Petition for Declaratory Order. Petitioner is the recognized exclusive bargaining representative of the blue-collar employees of the Town of Pahrump ("Town") as a result of an election and certification order by this Board. Petitioner seeks clarification regarding the Town's potential designation of employees of the Town as employees of Nye County ("County"). The position of Petitioner is that the Town cannot lay off employees and hire them as County employees in an attempt to avoid their bargaining obligation such as layoffs in the absence of lack of work or lack of money pursuant to NRS 288.150(3)(b). Petitioner seeks a declaration from this Board that the Town cannot change the employees in dispute into County employees without first obtaining permission of Local 14 or alternatively this Board.

Respondents filed responses to the Petition concurrently with motions to dismiss. Respondents argue that Petitioner is not asking the Board to determine the applicability or interpret any statute, regulation or decision of this Board, which is the sole purpose of NAC 288.380. Respondents point to the Petition's prayer for relief, none of which include a ruling regarding the applicability or interpretation of any statutory provision or rule or order from this Board. Thus, Respondents request that the Board dismiss the Petition.

1 The County further points to NAC 288.380 and NRS 288.250(1) which provide that good faith
2 bargaining must occur with the designated representative of the recognized employee organization.
3 However, NCEA, and not Petitioner, is the exclusive bargaining representative for certain employees of
4 the County. The County is currently engaged in negotiations with NCEA over potential changes to their
5 CBA, which could facilitate the County's hiring of any former Town employees who choose to apply
6 for jobs with the County. The County has never recognized Petitioner as the bargaining representative
7 of any of its employees and thus is not required to negotiate with Petitioner over changes to a CBA
8 involving a different bargaining representative (NCEA).

9 NAC 288.380 provides that any recognized employee organization "may petition the Board for a
10 declaratory order regarding the applicability or interpretation of any statutory provision or of any
11 regulation or decision of the Board." "The purpose of a declaratory statement is to address the
12 applicability of a statutory provision or order or rule of the agency in particular circumstances." *City of*
13 *Reno v. Reno Firefighters Local 731, Int'l Ass'n of Firefighters*, Item 777A, Case No. A1-046049
14 (2012).

15 As the Petition notes, NRS. 288.150(1) requires that a local government employer must
16 negotiate in good faith concerning mandatory subjects of bargaining set forth in NRS 288.150(2) *with*
17 the designated representative of *the recognized employee organization*. As such, this section plainly
18 provides that the County is not required to negotiate with Petitioner over changes to a CBA involving a
19 different bargaining representative (NCEA).

20 In its reply, Petitioner clarified that "Local 14 is seeking a Declaratory Order to ascertain the
21 applicability and/or interplay of the statutory obligation to bargain under NRS 288.150, with the
22 provisions for withdrawal or organization under NRS 288.160(3) and/or NAC 288.145, in
23 circumstances of first impression where two (2) local government employers under common
24 management have announced an intent to convert employees of one local government to employees of
25 another." The Board agrees that this question complies with NAC 288.280 and answers it as detailed
26 below.

27 NRS 288.150(2)(v) includes procedures for reduction in workforce as a mandatory subject of
28 bargaining. NRS 288.150(3)(b) clarifies that subject matters which are not within the scope of

1 mandatory bargaining, and reserved to the employer, include the right to reduce in force or lay off any
2 employee because of lack of work or lack of money, subject to NRS 288.150(2)(v). As such, the Board
3 agrees with Petitioner that the Town cannot lay off employees and hire them as County employees in an
4 attempt to avoid their bargaining obligation, such as layoffs, in the absence of lack of work or lack of
5 money pursuant to NRS 288.150(3)(b). Yet, the Town also further points out that Petitioner is the only
6 party that has delayed bargaining. The Town has been willing to bargain with Petitioner since August
7 2018. Indeed, Petitioner cancelled the last 3 scheduled bargaining sessions. The Town repeatedly
8 confirmed that it has not refused to bargain over any mandatory subject of bargaining, has made active
9 efforts to bargain with Petitioner, and Petitioner refused to bargain by cancelling the negotiations.

10 Next, NRS 288.160(3) provides that a local government employer may withdraw recognition of
11 an employee organization only after first receiving permission from this Board. Likewise, NAC
12 288.145 requires a local government employer to request a hearing before the Board and receive written
13 permission of the Board before withdrawing recognition of an employee organization. *See also, e.g.,*
14 *Int'l Union of Operating Engineers Local 501, AFL-CIO v. Esmeralda County*, Case No. 2018-014
15 (2019). Here, the Board does not view the Town's reduction in force or lay off as a withdrawal of
16 recognition. By the plain and unambiguous language of the statute and regulation, the Town has not
17 withdrawn recognition of Petitioner. To the extent that the bargaining unit may cease to exist, the
18 Board determines the remainder of that question is speculative pursuant to NAC 288.410. While the
19 bargaining unit may no longer have members, the plain language of the statute and regulation only
20 require permission from this Board when a local government employer seeks to withdraw recognition
21 from an employee organization, and not in other circumstances, even if alleged as a de facto
22 withdrawal.

23 While Petitioner seems to have clarified in its reply, as indicated above, to the extent any further
24 questions remain, the Board agrees with Respondent that they were not properly presented. In its Reply,
25 Petitioner indicates that Respondents failed to address authorities cited in the Petition relating to status
26 quo doctrine or other issues (while Respondents dispute this). The Petition makes clear that these
27 authorities are based off of NLRB precedent – Petition, at 5, 7. As indicated, NAC 288.380 provides
28 that any recognized employee organization may petition the Board for a declaratory order regarding the


1 applicability or interpretation of a *decision of the Board*. Petitioner's citation to the 1997 case of
2 *Teamsters Local 14 v. City of Henderson* is not applicable. As indicated, the Town agrees that it must
3 negotiate in good faith regarding mandatory subjects of bargaining.

4 Dated this 30th day of September 2019.

5 GOVERNMENT EMPLOYEE-
6 MANAGEMENT RELATIONS BOARD

7 By: 
8 CAM WALKER, Presiding Officer

9 By: 
10 GARY COTTINO, Board Member

11 By: 
12 BRETT HARRIS, ESQ., Board Member
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