

FILED

JUN 02 2020

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

OPERATING ENGINEERS LOCAL UNION
NO. 3,

Complainant,

v.

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT,

Respondent.

Case No. 2020-012

NOTICE OF ENTRY OF ORDER

PANEL D

ITEM NO. 864

TO: Complainant Operating Engineers, Local Union No. 3 and their attorneys Thomas J. Donaldson, Esq., Francis Flaherty, Esq., and Dyer and Lawrence, LLP;

TO: Respondent Incline Village General Improvement District and their attorneys Jason Guinasso, Esq., Alex Velto, Esq., and Hutchison & Steffen, PLLC.

PLEASE TAKE NOTICE that the **ORDER ON RESPONDENT'S MOTION TO DISMISS** was entered in the above-entitled matter on June 2, 2020.

A copy of said order is attached hereto.

DATED this 2nd day of June 2020.

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 2nd day of June 2020, I served a copy of the foregoing **NOTICE OF ENTRY**
5 **OF ORDER** by mailing a copy thereof, postage prepaid to:

6 Thomas J. Donaldson
7 Francis C. Flaherty
8 Dyer Lawrence, LLP
9 2805 Mountain Street
10 Carson City, NV 89703

11 Jason D. Guinasso, Esq
12 Alex R. Velto, Esq.
13 Hutchison & Steffen, PLLC
14 500 Damonte Ranch Parkway, Suite 980
15 Reno, NV 89521

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MARISU ROMUALDEZ ABELLAR
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INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT,

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Case No. 2020-012

**ORDER ON RESPONDENT'S MOTION
TO DISMISS**

EN BANC

ITEM NO. 864

On May 27, 2020, this matter came before the State of Nevada, Government Employee-Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Employee-Management Relations Act, NAC Chapter 288, and NRS Chapter 233B. At issue was Respondent, Incline Village General Improvement District's Motion to Dismiss.

Respondent argues that Complainant in this matter failed to exhaust its contractual remedies and the Board should dismiss the complaint pursuant to NAC 288.375. Specifically, Complainant failed to file a grievance against the District. In Opposition, Complainant states that the Board has exclusive jurisdiction over unfair labor practices, and Respondent's actions were not a violation of the MOU and thus not grievable.

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 liberally to effectuate that purpose. *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); *Int'l Union of Operating Engineers, Stationary Local 39 v. City of Reno*, Case No. A1-045567, Item No. 395 (1996); *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*

1 *Dep't*, Case No. A1-045783, Item No. 578 (2004); *Saavedra v. City of Las Vegas*, Case No. A1-
2 045911, Item No. 664 (2007); *Int'l Ass'n of Firefighters, Local 731 v. City of Reno*, Case No. A1-
3 045918, Item No. 670 (2008); *Boykin v. City of North Las Vegas*, Case No. A1-045921, Item No. 674B
4 (2008); *Las Vegas City Employees' Ass'n v. City of Las Vegas*, Case No. A1-045940, Item No. 691
5 (2008); *Wilson v. North Las Vegas Police Dep't*, Case No. A1-045925, Item No. 677D (2009);
6 *Rosenberg v. The City of North Las Vegas*, Case No. A1-045951 (2009); *Storey County Firefighters*
7 *Ass'n, IAAF Local 4226 v. Storey County*, Case No. A1-045979 (2010); *Jessie Gray Jr. v. Clark County*
8 *School Dist.*, Case No. A1-046015, Item No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las*
9 *Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018).

10 Moreover, the Board generally may defer to arbitration proceedings in consideration with its
11 exclusive jurisdiction and, in such cases, it is the practice of the Board to stay matters pending during
12 the arbitration process. *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212,
13 1217 (2002); *Clark County Education Ass'n v. Clark County Sch. Dist.*, EMRB Case No. A1-046025,
14 Item No. 764 (2011); *Rosenberg v. The City of N. Las Vegas*, EMRB Case No. A1-045951, Item No.
15 707 (2009); *Thomas v. City of N. Las Vegas*, EMRB Case No. A1-045618, Item No. 407 (1997), *City of*
16 *Las Vegas v. LVPOA*, Case No. 2017-012 (2017); *Las Vegas Metropolitan Police Dep't v. Las Vegas*
17 *Police Protective Ass'n*, Case No. 2018-017 (2018); *McCray v. Clark County*, Case No. 2019-013
18 (2020).

19 While Complainant argues that the grievance procedures are not at issue because Respondent
20 did not violate the MOU, Complainant has not shown that they were unable to file a grievance or any
21 such grievance has been rejected. Thus, the Board stays this matter pending either exhaustion of
22 contractual remedies or a showing of the foregoing consistent with the above.

23 The District further argued that there is no probable cause for the Complaint, and the Board
24 should also dismiss for this reason. As this Board has also repeatedly held, cases involving factual
25 disputes, and credibility determinations, require a hearing and cannot be disposed of by a motion to
26 dismiss. NAC 288.375 provides that the Board **may** dismiss a matter if the Board determines that no
27 probable cause exists for the complaint. An evidentiary hearing is required in order to determine the
28 issues presented including the proper submission and presentation of evidence as well as credibility

1 determinations in accordance with NRS and NAC 288. As such, the Motion to Dismiss is denied in
2 this respect.

3 IT IS, THEREFORE, ORDERED that the Motion to Dismiss the Complaint is GRANTED in
4 part and DENIED in part.

5 IT IS FURTHER ORDERED that the matter be STAYED pending exhaustion of contractual
6 remedies consistent with the above.

7 IT IS FURTHER ORDERED that the parties shall file a joint status report approximately every
8 90 days on a schedule to be determined by the Commissioner.

9 Dated this 2nd day of June 2020.

10 GOVERNMENT EMPLOYEE-
11 MANAGEMENT RELATIONS BOARD

12 BY: 
13 BRENT C. ECKERSLEY, Chair