

FILED

FEB 04 2021

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

OPERATING ENGINEERS LOCAL UNION
NO. 3,

Case No. 2020-012

Complainant,

ORDER

v.

EN BANC

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT

ITEM NO. 864-B

Respondent.

On January 28, 2021, 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 (EMRA, NRS Chapter 288) and NAC Chapter 288. The Board held an order to show cause (OSC) as to why the stay should not be lifted.

In a previously issued order, the Board stated:

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

After the filing of status reports, we noted that “[n]o offer of proof has been provided to this Board to indicate that either of the foregoing conditions has been satisfied warranting the lifting of the stay.”¹ Thereafter, Complainant filed a document entitled “Offer of Proof”; however, this document

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

1 was simply a reiteration of previously made arguments and did not contain any actual submission
2 showing the above has been satisfied.

3 In said "Offer of Proof", Complainant provided that in a previous arbitration between the
4 parties, it raised Respondent's actions alleged in the Complaint at the arbitration, though the arbitrator
5 did not address this issue in his Award. Complainant also argued that it has failed to timely file a
6 grievance and, as such, it would simply be denied by the District and thus futile. Further, the Board has
7 exclusive jurisdiction over unfair labor practices.

8 In Response, Respondent provides that Complainant simply refuses to comply with its
9 obligation to its exhaust its contractual remedies and this cannot be allowed to circumvent the bargained
10 for processes as well as the Board's regulation which has the force of law. Further, Respondent
11 indicates that the dispute brought by Complainant is over the District's interpretation and application of
12 the MOU. The clause in question limits employee discussion with union representatives so the
13 workplace is not disrupted. Central to the Complaint, and the District's main defense, is the District's
14 interpretation and application of Article 10 of the MOU (governing employee communications).
15 Assuming allegations in the complaint are true, Respondent argues at worst it improperly applied the
16 provision in the MOU by overbroadly applying Article 10 of the MOU and placing a limit on
17 communications with union attorneys on district property in preparation for an arbitration proceeding.
18 As such, Respondent applied a "specific provision of this Agreement" in a manner that Complainant
19 claims "is not a management right", which means Complainant needed to file a grievance and exhaust
20 its contractual remedies pursuant to the bargained for processes.

21 NAC 288.375 provides this Board *may* dismiss a matter for any of the following reasons:
22 "Unless there is a clear showing of special circumstances or extreme prejudice, if the parties have not
23 exhausted their contractual remedies, including all rights to arbitration." NAC 288.375(2).

24 *Vegas Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018); *County of Clark,*
25 *Nev. v. Int'l Ass'n of Fire Fighters, Local 1908*, Case No. 2017-033 (2018). Moreover, the Board generally may defer to
26 arbitration proceedings in consideration with its exclusive jurisdiction and, in such cases, it is the practice of the Board to
27 stay matters pending during the arbitration process. *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59
28 P.3d 1212, 1217 (2002); *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-045657, Item No. 446
(1999); *Clark County Education Ass'n v. Clark County Sch. Dist.*, EMRB Case No. A1-046025, Item No. 764 (2011);
Rosenberg v. The City of N. Las Vegas, EMRB Case No. A1-045951, Item No. 707 (2009); *Thomas v. City of N. Las Vegas*,
EMRB Case No. A1-045618, Item No. 407 (1997), *City of Las Vegas v. LVPOA*, Case No. 2017-012 (2017); *Las Vegas*
Metropolitan Police Dep't v. Las Vegas Police Protective Ass'n, Case No. 2018-017 (2018); *McCray v. Clark County*, Case
No. 2019-013 (2020).

1 At the OSC, the parties conceded there is a “dispute between the District and the Union arising
2 over the interpretation or application of a specific provision [of the MOU] which is not a management
3 right”, falling within the definition of a grievance pursuant to the parties’ bargained-for processes.
4 Moreover, Complainant conceded that even if the District denies the grievance, Complainant could then
5 bring the matter to arbitration through the step process provided in the agreement. Furthermore, the
6 parties conceded that the prior arbitration was related to the just cause determination and not directly on
7 the Complaint before this Board. Indeed, Respondent conceded that a *res judicata* defense would not
8 bar Complainant’s argument at a new arbitration between the parties even though the conduct was
9 raised at the prior arbitration. Respondent provided that the issue before the Board relating to limiting
10 employee communications was not properly before the prior arbitrator, fully explored, and the Board
11 does not have a complete record.

12 While the Board has exclusive jurisdiction over unfair labor practices, the parties must first
13 exhaust their contractual remedies, “including all rights to arbitration”. In the Board’s discretion, we
14 may defer to arbitration proceedings. This is well established.

15 Given the foregoing, the Board again finds that there has not been a *clear* showing of special
16 circumstances or extreme prejudice. As such, the stay will remain in effect until Complainant complies
17 with the Board’s orders. Further, if Complainant does not submit proof of filing a grievance, it may
18 result in dismissal of this case.

19 IT IS, THEREFORE, ORDERED that the stay remain in effect consistent with the above.

20 IT IS FURTHER ORDERED that Complainant shall submit proof of filing a grievance within
21 30 days of the date of this Order.

22 IT IS FURTHER ORDERED that the parties shall file joint status reports every 60 days from
23 the date of the filing of the grievance.

24 Dated this 4th day of February 2021.

25 GOVERNMENT EMPLOYEE-
26 MANAGEMENT RELATIONS BOARD

27 BY: 
28 _____

BRENT C. ECKERSLEY, Chair

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OPERATING ENGINEERS LOCAL UNION
NO. 3,

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v.

INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT,

Respondent.

Case No. 2020-012

NOTICE OF ENTRY OF ORDER

ITEM NO. 864-B

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** was entered in the above-entitled matter on February 4, 2021.

A copy of said order is attached hereto.

DATED this 4th day of February 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY


BRUCE SNYDER
Commissioner

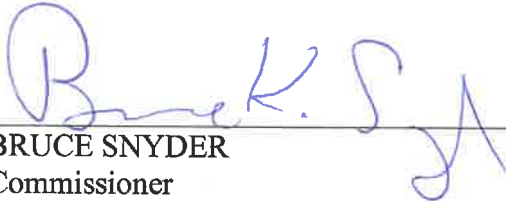
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 4th day of February 2021, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Thomas J. Donaldson
Francis C. Flaherty
Dyer Lawrence, LLP
2805 Mountain Street
Carson City, NV 89703

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



BRUCE SNYDER
Commissioner