

FILED

SEP 21 2021

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

ITEM NO. 864-C

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
September 21, 2021.

A copy of said order is attached hereto.

DATED this 21st day of September 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY



MARISU ROMUALDEZ ABELLAR
Executive Assistant

1
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 21st day of September 2021, I served a copy of the foregoing **NOTICE OF**
5 **ENTRY 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
Executive Assistant

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Case No. 2020-012

ORDER

EN BANC

ITEM NO. 864-C

On September 9, 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.

This has been an ongoing dispute between the parties regarding their obligations in this case. We most recently continued the stay in this matter pending an exhaustion of the contractual remedies. In Complainant's June Status Report, Complainant filed proof that they proceeded with the grievance consistent with this Board's prior orders. However, Complainant stated that since it would be "extremely prejudicial" pursuant to NAC 288.375(2) and "needlessly expensive" to the parties for Complainant to proceed with arbitration, Complainant will not advance the grievance to Step 5 arbitration.

Given Complainant's choice, Respondent has requested the stay to be lifted and the matter dismissed. Respondent argues that Complainant continues in its attempt to circumvent the bargained for processes and it is well established that contractual remedies must be exhausted before proceeding before the Board. Complainant responded that Complainant timely advanced the grievance but was denied, and Complainant should not be required to proceed with arbitration.

...

...

1 NAC 288.375 provides this Board may dismiss a matter for any of the following reason,
2 namely: “Unless there is a clear showing of special circumstances or extreme prejudice, if the parties
3 have not exhausted their contractual remedies, including all rights to arbitration.” NAC 288.375(2).

4 The Complaint in this matter is clear. Complainant notes that the parties have negotiated a
5 Memorandum of Understanding with a term of July 1, 2017 to June 30, 2020 (MOU) at issue in this
6 case. It was conceded that Article 10 of the MOU governs employee communications with a union
7 representative which is directly at issue in the Complaint. In other words, central to the Complaint, and
8 the District’s main defense, is the District’s interpretation and application of Article 10 of the MOU
9 (governing employee communications). The parties voluntarily chose to enter into this provision.

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

21 While the Board has exclusive jurisdiction over unfair labor practices, the parties must first
22 exhaust their contractual remedies, “including all rights to arbitration”. In the Board’s discretion, we
23 may defer to arbitration proceedings.¹ However, the Board does not have the benefit of the arbitrator’s

24
25 ¹ *City of Reno v. Reno Police Protective Ass’n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002); *Ed.*
26 *Support Employees Ass’n v. Clark County Sch. Dist.*, Case No. A1-045657, Item No. 446 (1999); *Clark*
27 *County Education Ass’n v. Clark County Sch. Dist.*, EMRB Case No. A1-046025, Item No. 764 (2011);
28 *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); *Operating Engineers*
Local Union No. 3 v. Incline Village Gen’l Improvement Dist., Case No. 2020-012 (2020).

1 interpretation of the contract (which is generally initially in the arbitrator's or court's purview) due to
2 Complainant's refusal. It is of no defense to argue that Complainant's own failure to timely comply
3 should allow Complainant to circumvent the bargained for processes. The logical end to this argument
4 would be to permit the perverse incentive to ignore bargained for processes in order to skip straight to
5 Board review. Complainant failed to provide us with any direct authority that would permit such. The
6 Board will not condone Complainant's attempts to circumvent the bargained for processes and
7 expediate Board review here.

8 The Board has repeatedly emphasized that the preferred method for resolving disputes is
9 through the bargained-for processes, and the Board applies NAC 288.375 liberally to effectuate that
10 purpose. *See also* NAC 288.040; *see also, e.g., Ed. Support Employees Ass'n v. Clark County Sch.*
11 *Dist.*, Case No. A1-045509, Item No. 288 (1992); *Int'l Union of Operating Engineers, Stationary Local*
12 *39 v. City of Reno*, Case No. A1-045567, Item No. 395 (1996); *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); *Int'l Ass'n of Firefighters, Local 731 v. City of Reno*, Case No. A1-
17 045918, Item No. 670 (2008); *Boykin v. City of North Las Vegas*, Case No. A1-045921, Item No. 674B
18 (2008); *Las Vegas City Employees' Ass'n v. City of Las Vegas*, Case No. A1-045940, Item No. 691
19 (2008); *Wilson v. North Las Vegas Police Dep't*, Case No. A1-045925, Item No. 677D (2009);
20 *Rosenberg v. The City of North Las Vegas*, Case No. A1-045951 (2009); *Storey County Firefighters*
21 *Ass'n, IAAF Local 4226 v. Storey County*, Case No. A1-045979 (2010); *Jessie Gray Jr. v. Clark County*
22 *School Dist.*, Case No. A1-046015, Item No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las*
23 *Vegas Police Protective Ass'n, Inc.*, Case No. 2018-017 (2018); *County of Clark, Nev. v. Int'l Ass'n of*
24 *Fire Fighters, Local 1908*, Case No. 2017-033 (2018).

25 Given the foregoing, the Board again finds that there has not been a *clear* showing of special
26 circumstances or extreme prejudice. As such, given that Complainant has unquestionably refused to
27 further proceed with exhausting their contractual remedies, we dismiss this case.

28 . . .

1 **FINDINGS OF FACT**

2 1. The parties have negotiated a Memorandum of Understanding with a term of July 1,
3 2017 to June 30, 2020 (MOU) at issue in this case.

4 2. Article 10 of the MOU governs employee communications with a union representative
5 which is directly at issue in the Complaint.

6 3. Central to the Complaint, and the District's main defense, is the District's interpretation
7 and application of Article 10 of the MOU (governing employee communications).

8 4. The parties conceded there was a "dispute between the District and the Union arising
9 over the interpretation or application of a specific provision [of the MOU] which is not a management
10 right", falling within the definition of a grievance pursuant to the parties' bargained-for processes.

11 5. Complainant conceded that even if the District denies the grievance, Complainant could
12 then bring the matter to arbitration through the step process provided in the agreement.

13 6. The parties conceded that the prior arbitration was related to the just cause determination
14 and not directly on the Complaint before this Board.

15 7. Respondent conceded that a *res judicata* defense would not bar Complainant's argument
16 at a new arbitration between the parties even though the conduct was raised at the prior arbitration.

17 8. If any of the foregoing findings is more appropriately construed as a conclusion of law,
18 it may be so construed.

19 **CONCLUSIONS OF LAW**

20 1. The Board is authorized to hear and determine complaints arising under the Local
21 Government Employee-Management Relations Act.

22 2. The Board has exclusive jurisdiction over the parties and the subject matters of the
23 Complaint on file herein pursuant to the provisions of NRS Chapter 288.

24 3. NAC 288.375 provides this Board may dismiss a matter for any of the following reason,
25 namely: "Unless there is a clear showing of special circumstances or extreme prejudice, if the parties
26 have not exhausted their contractual remedies, including all rights to arbitration."

27 4. While the Board has exclusive jurisdiction over unfair labor practices, the parties must
28 first exhaust their contractual remedies, "including all rights to arbitration".

5. In the Board's discretion, we may defer to arbitration proceedings.

6. It is of no defense to argue that Complainant's own failure to timely comply should allow Complainant to circumvent the bargained for processes.

7. The logical end to this argument would be to permit the perverse incentive to ignore bargained for processes in order to skip straight to Board review.

8. 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.

9. There has not been a *clear* showing of special circumstances or extreme prejudice.

10. If any of the foregoing conclusions is more appropriately construed as a finding of fact, it may be so construed.

ORDER

IT IS, THEREFORE, ORDERED that the matter is DISMISSED.

Dated this 21 day of September 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: Brent Eckersley
BRENT ECKERSLEY, ESQ., Chair

By: Sandra Masters
SANDRA MASTERS, Vice-Chair

By: Gary A. Cottino
GARY COTTINO, Board Member

By: BRETT HARRIS, ESO., Board Member

By: Michael J. Smith
MICHAEL J. SMITH, Board Member