

FILED

FEB 23 2021

STATE OF NEVADA
E.M.R.B.

STATE OF NEVADA

GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

CLARK COUNTY EDUCATION ASSOCIATION
and DAVITA CARPENTER,

Complainants,

v.

CLARK COUNTY SCHOOL DISTRICT,

Respondent,

and

EDUCATION SUPPORT EMPLOYEES
ASSOCIATION, CLARK COUNTY
ASSOCIATION OF SCHOOL ADMINISTRATORS
AND PROFESSIONAL-TECHNICAL
EMPLOYEES,

Intervenors.

Case No. 2020-008

NOTICE OF ENTRY OF ORDER

PANEL C

ITEM NO. 869-A

TO: Complainants and Counter-Respondent and their attorneys of record Adam Levin, Esq. and Law Office of Daniel Marks;

TO: Respondent and Counter-Complainant its attorneys of record Jon Okazaki, Esq. and the Clark County School District Office of the General Counsel;

TO: Intervenor ESEA and its attorneys of record Frank Flaherty, Esq. and Dyer Lawrence, LLP;

TO: Intervenor CCASAPE and its attorneys of record Patrick Reilly, Esq. and Christopher Humes, Esq. and Brownstein Hyatt Farber Schreck, LLP.

PLEASE TAKE NOTICE that the **ORDER ON CCASAPE's MOTION FOR CLARIFICATION; ORDER TO STAY** was entered on the 23rd day of February 2021, a copy of which is attached hereto.

DATED this 23rd day of February 2021.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY: 

MARISU ROMUALDEZ ABELLAR
Executive Assistant

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 23rd day of February 2021, I served a copy of the foregoing NOTICE OF ENTRY OF ORDER by mailing a copy thereof, postage prepaid to:

Adam Levine, Esq.
Law Office of Daniel Marks
610 S. Ninth Street
Las Vegas, NV 89101

Jon Okazaki, Esq.
Crystal J. Herrera, Esq.
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Frank Flaherty, Esq.
Dyer Lawrence, LLP
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Patrick Reilly, Esq.
Christopher Humes, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614



MARISU ROMUALDEZ ABELLAR
Executive Assistant

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Case No. 2020-008

**ORDER ON CCASAPE's MOTION FOR
CLARIFICATION; ORDER TO STAY**

PANEL C

ITEM NO. 869-A

On February 18, 2021, this matter came before the State of Nevada, Government Employee-Management Relations Board for consideration and decision pursuant to the provisions of the Employee-Management Relations Act (EMRA, NRS Chapter 288) and NAC Chapter 288. At issue was Clark County Association of School Administrators and Professional-technical Employees' (CCASAPE) Motion for Clarification.

CCASAPE requests clarification of our December 2020 Declaratory Order as it alleges CCSD misrepresented the Board's Declaratory Order. Specifically, "CCSD is mispresenting that the Board's Order commands the parties to follow existing collective bargaining agreements, regardless of their compliance with Nevada law. CCASAPE asks the Board to clarify two issues: (1) Did the Board's Declaratory Order take any position on the interpretation of NRS 388G.610 and the interplay between Subsections 2 and 4 of the statute; and (2) Did the Board's Order indicate that current negotiated agreements are to be followed?

1 ESEA and CCEA argue the Board's Declaratory Order does not require clarification. The
2 Board tends to agree. As such, the Board denies the instant motion. However, while the Board
3 believes the Declaratory Order was clear on what it purports and what it does not, the Board reiterates
4 that it neither has jurisdiction over NRS 388G, nor did the Board analyze the parties' negotiated
5 agreements in rendering our Declaratory Order. The order was plainly limited in nature including
6 determining whether the EMRA conflicted with NRS 388G.610, as required by rules of statutory
7 construction.¹ The Board did not analyze the parties CBAs or accept any evidence in this matter. The
8 parties have not yet had an opportunity or an ability to present evidence. *See, e.g.,* NAC 288.380,
9 288.390, 288.400. Further, the parties concede, as is self-evident from the Declaratory Order, that the
10 Board did not address the interplay between NRS 388G.610(2) and (4), which is clearly within the
11 Court's jurisdiction to do so. Hopefully, the foregoing will "help facilitate the related proceedings in
12 the" EJDC as requested by CCASAPE.

13 CCASAPE argues that this case largely surrounds a dispute surrounding the interpretation,
14 implementation, and interplay of the various subsections in NRS Chapter 388G after the statutory
15 changes thereto (there were no relevant changes made to the EMRA). The Board agrees.

16 Given the foregoing, in the interests of administrative and judicial economy, now that the Board
17 had issued its initial order as to the crossover of the EMRA and NRS 388G, the Board stays its ruling
18 on the remaining issues in this case pending the Court's analysis of NRS 388G. This will ensure the
19 Board does not infringe on the Court's jurisdiction as well as prevent redundant and inefficient
20 proceedings. *See, e.g., Abel v. Las Vegas Metropolitan Police Dep't*, Case No. 2020-005 (2020); *Boykin*
21 *v. City of N. Las Vegas*, Case No. A1-045921, Item No. 674B (2008); *Wilson v. N. Las Vegas Police*
22 *Dep't*, Case No. A1-045925, Item No. 677D (2009); *Int'l Union of Operating Engineers, Stationary*
23 *Local 39 v. City of Reno*, Case No. A1-045567, Item No. 395 (1996).

25 ¹ CCASAPE filed an action in the Eighth Judicial District Court requesting relief, in part, that "CCSD's Teacher Lottery is
26 an illegal practice pursuant to NRS 388G.610" (District Court Action). The District Court purportedly issued a temporary
27 stay as there could be a crossover of the issues related to NRS 288.150(2) and NRS 388G. As indicated in the Declaratory
28 Order, we agreed to first issue an initial ruling for the Declaratory Order so the District Court Action could continue as
further explained herein. As CCSD provided, "To the extent that issue is put to rest [interplay of NRS 388G and the
referenced collective bargaining statutes], the basis for CCSD's stay becomes moot, because the collective bargaining issues,
which are the crux of the Motion to Stay would no longer be at issue." Reply, at 4.

1 In other words, the Board does not have the jurisdiction to determine issues solely related to
2 NRS Chapter 388G, including whether the teacher lottery is illegal pursuant to NRS 388G as
3 CCASAPE requested via their Writ (as well as interpreting the various subsections of NRS 388G as
4 issue in that case). While the Board believes NRS 388G.610 is plain and unambiguous, *solely as*
5 *related to determining whether it conflicts with NRS 288 as detailed in the Board's limited declaratory*
6 *order*, it is within the Court's jurisdiction to analyze NRS 388G.610. If the Board relies on a potential
7 incorrect analysis of NRS 388G, it could negate any conclusions of this Board stemming therefrom.
8 The Court's analysis of NRS 388G.610 will likely influence any further rulings of this Board in the
9 instant dispute.

10 Thus, the Board will await the Court's analysis and determination regarding NRS 388G. The
11 Board is cautious to note that it has exclusive jurisdiction over the EMRA (NRS Chapter 288) (as
12 asserted by CCEA), and that it stay this case for the purposes of the Court's analysis and determination
13 as to NRS 388G only.² This stay in no way or manner abdicates its exclusive jurisdiction over the
14 EMRA.³

15 Finally, CCEA previously provided that an arbitration is currently pending as to Complainant.
16 The Board has repeatedly emphasized that the preferred method for resolving disputes is through the
17 bargained-for processes, and the Board applies NAC 288.375 liberally to effectuate that purpose.⁴

18
19 ² While CCEA argues that CCASAPE alleged a unilateral change in the District Court Action, it is clear not only from
20 CCASAPE's submissions to this Board but also publicly available documents in the Court Action, that CCASAPE argues
21 impossible unilateral placements or assignment in violation of NRS 388G.610, not in violation of the EMRA. Simply
because CCASAPE used the word "unilateral" does not mean they are alleging impossible unilateral changes to mandatory
subjects of bargaining in violation of the EMRA. Notably, CCASAPE has not filed a prohibited practices complaint with
this Board.

22 ³ NRS 288.110(2); *City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002); *UMC*
23 *Physicians Bargaining Unit v. Nevada Serv. Employees Union*, 124 Nev. 84, 178 P.3d 709, (2008); *City of Henderson v.*
24 *Kilgore*, 122 Nev. 331, 333, 131 P.3d 11, 12 (2006); *Truckee Meadows Fire Prot. Dist. v. Int'l Ass'n of Fire Fighters, Local*
2487, 109 Nev. 367, 849 P.2d 343 (1993); *City of N. Las Vegas v. State Local Gov't Employee-Mgmt. Rel. Bd.*, 127 Nev.
631, 261 P.3d 1071 (2011); *Weiner v. Beatty*, 121 Nev. 243, 116 P.3d 829 (2005).

25 ⁴ See also NAC 288.040; see also, e.g., *Ed. Support Employees Ass'n v. Clark County Sch. Dist.*, Case No. A1-045509, Item
26 No. 288 (1992); *Int'l Union of Operating Engineers, Stationary Local 39 v. City of Reno*, Case No. A1-045567, Item No.
27 395 (1996); *Nevada Serv. Employees Union v. Clark Cty.*, Case No. A1-045759, Item No. 540 (2003); *Carpenter vs.*
28 *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*

1 Moreover, the Board generally may defer to arbitration proceedings in consideration with our exclusive
2 jurisdiction and, in such cases, it is the practice of the Board to stay matters during the arbitration
3 process.⁵ As such, the Board stays this matter for this reason as well.

4 IT IS, THEREFORE, ORDERED that the Motion for Clarification is DENIED.

5 IT IS FURTHER ORDERED that the matter be stayed consistent with the foregoing.


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

8 Dated this 23rd day of February 2021.

9 GOVERNMENT EMPLOYEE-
10 MANAGEMENT RELATIONS BOARD

11 By: 
12 GARY COTTINO, Presiding Officer

13 By: 
14 SANDRA MASTERS, Vice-Chair

15 By: 
16 BRETT HARRIS, ESQ., Board Member

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23 *Firefighters Ass'n, IAAF Local 4226 v. Storey County*, Case No. A1-045979 (2010); *Jessie Gray Jr. v. Clark County School*
24 *Dist.*, Case No. A1-046015, Item No. 758 (2011); *Las Vegas Metropolitan Police Dep't v. Las Vegas Police Protective*
Ass'n, Inc., Case No. 2018-017 (2018); *County of Clark, Nev. v. Int'l Ass'n of Fire Fighters, Local 1908*, Case No. 2017-033
(2018).

25 ⁵*City of Reno v. Reno Police Protective Ass'n*, 118 Nev. 889, 895, 59 P.3d 1212, 1217 (2002); *Ed. Support Employees Ass'n*
26 *v. Clark County Sch. Dist.*, Case No. A1-045657, Item No. 446 (1999); *Clark County Education Ass'n v. Clark County Sch.*
27 *Dist.*, EMRB Case No. A1-046025, Item No. 764 (2011); *Rosenberg v. The City of N. Las Vegas*, EMRB Case No. A1-
28 *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)